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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 60

DICK GREGORY, et al.,

Defendants-Appellants,

vs.

CITY OF CHICAGO, a Municipal Corporation,

Plaintiff-Appellee.

JOINT APPENDIX

MIDWEST LAW PRINTING CO., 326 N. MICHIGAN, CHICAGO 60601, FINANCIAL 6-2966

INDEX

	PAGE
Complaint	1
Verdict of the Jury	1
Judgment Order	2
Appeal Bond	3
Post-Trial Motion	3
Order Denying Post-Trial Motion	16
Notice of Appeal	16
Notice of Filing Notice of Appeal	17
Praecipe for Trial Court Record	17
Order Approving Report of Proceedings	17
Excerpts of Trial Testimony	17
Opening Statement by Mr. Elrod	19
Opening Statement by Mrs. Williams	26
Testimony of William Hougeson	31
Testimony of Sergeant Golden	103
Testimony of Sergeant Fuhry	107
Testimony of Max Ilkowitz	112
Testimony of Sergeant Hogan	113
Testimony of Sergeant Green	114
Testimony of Howard M. Pierson	121

Colloquy re Motion for Directed Verdict 146
Testimony of Dick Gregory 165
Conference on Instructions 210
Closing Argument by Mr. Chambers 268
Closing Argument by Mrs. Williams 275
Closing Argument by Mr. Elrod 282
Court's Charge to Jury 289
Forms of Verdict 294
Verdict of the Jury 296
Complaint 299
Stipulation 300
Verdict 300
Notice of Appeal 301
Praecipe for Trial Court Record 302
Order Resetting Appeal Bond 302
Certificate of Clerk 302

DOCKET ENTRIES

8-3-65—Complaint in Cause No. 65 MC1 585788 filed.

11-12-65—Verdict and Judgment entered.

11-12-65—Cause continued to November 15, 1965.

11-15-65—Bond posted.

11-15-65—Cause continued to November 16, 1965.

11-15-65—Motion for extension of time to file Post Trial Motion sustained.

1-17-66—Post Trial Motion filed.

2-10-66—Post Trial Motion denied.

3-11-66—Notice of Appeal filed.

3-21-66—Praecipe for Trial Court Record filed.

4-29-66—Report of Proceedings approved.

8-3-65—Complaint in Cause No. 65 MC1 585810 filed.

2-23-66—Stipulation that the common law record and report of proceedings in Cause No. 65 MC1 585788 be incorporated by reference in Cause No. 65 MC1 585810.

2-23-66—Verdict and Judgment entered.

2-23-66—Motion to vacate judgment filed.

3-11-66—Notice of Appeal filed.

3-21-66—Praecipe for Trial Court Record filed.

4-20-66—Order resetting appeal bond; allowing original appearance bonds to stand; and that supersedeas take effect as of April 1, 1966.

• • •

(Joint Excerpts from Record—Caption in Illinois Supreme Court)

• • •

[3] (Caption in Municipal Division, Circuit Court of Cook County—Trial Court)

City Of Chicago
A Municipal Corporation,
Plaintiff

COMPLAINT

v.

No.

Gregory, Dick
Defendant

OH. C. Green complainant, now appears before the Circuit Court of Cook County and states that Gregory Dick has, on or about 2 Aug. 65 at 35th St. between Lowe & Union

Committed the offense of Disorderly Conduct in that he

☒ Did make or aid in making an improper noise, riot, disturbance, breach of peace, or diversion tending to a breach of the peace, within the limits of the city.

• • •

In violation of Chapter 193 Section 1 of The Municipal Code of The City of Chicago.

(Complainant's Signature and Address)

(Verification and Filing Stamp)

[4] (Caption: Verdict)

"We, The Jury, Find The Defendant, Dick Gregory, Guilty Of Violating Chapter 193, Section 1, Disorderly Conduct-Collect In A Crowd Or Body For

Unlawful Purposes, Or For A Purpose To The Annoyance And Disturbance Of Other Persons) Of The Municipal Code Of Chicago, As Amended".

It is ordered by the Court that this cause be and the same is hereby continued to November 15th, 1965.

[5] (Caption)

Now come the parties to this cause and it appearing to the Court that defendant has been convicted in this cause, a fine is assessed against said defendant in the sum of Two Hundred Dollars ($200.00).

It appearing to the Court that said fine accrued to the plaintiff in consequence of the violation by defendant of the ordinance of the plaintiff described in the complaint herein, the Court finds that it has jurisdiction of the subject matter of this cause and of the parties hereto, and that said defendant has been duly and regularly convicted of a violation of said ordinance according to law, and that any person convicted of a violation of said ordinance may, under the law, be imprisoned in the House of Correction of said City for non-payment of any fine imposed for such violation, and it further appearing to the Court that default has been made by said defendant in the payment of said moneys and that said defendant is now here present in open Court, it is ordered that the Bailiff of this Court do and he hereby is commanded to forthwith take the body of said defendant from the bar of this Court and convey the body of said defendant forthwith to the House of Correction of the City of Chicago in the County of Cook and State of Illinois, and deliver the body of said defendant into the custody of the Superintendent of said House of Correction.

[6] And the Superintendent of said House of Correction is hereby commanded to receive the body of said defendant into his custody and confine said defendant in said House of Correction at labor under the direction of said Superintendent and according to the rules of said House of Correction, from and after the delivery of said body to said Superintendent until the whole of said fine shall have been worked out by said defendant in said House of Correction at the rate of Five Dollars ($5.00) per day for each day's work or until said defendant shall have been discharged according to law, provided said imprisonment shall not exceed six months.

Appeal Bond set at Five Hundred Dollars ($500.00).

Cause continued to November 16th, 1965.

Motion for extension of time to file post trial motion sustained.

Continued to January 17th, 1966.

It is ordered by the Court that leave be and the same is hereby given Ronald Silverman to file additional appearance for defendant and defendant be and he is hereby ordered to submit transcript to City attorney.

It is further ordered by the Court that hearing on post trial motion be and the same is hereby set for January 31st, 1966, in Branch 5, at 9:30 O'clock A.M.

[8] (Five Hundred Appearance Bond; 10% Deposited)

[12] (Caption)

POST-TRIAL MOTION

Dick Gregory, Gean Gregory, Charles Gant, William Dixon, and Howard Barber, defendants, by Jean Williams and Ronald Silverman, their attorneys, move that

the court grant their motion for directed verdict which was made at the close of the prosecution's evidence and denied. In the alternative, the defendants move to arrest entry of judgment on the verdict of the jury and move for judgment notwithstanding the verdict. In the event that said motions are denied, defendants move for a new trial.

As grounds for the foregoing motions, defendants state:

1. The court erred in denying defendants' motion to dismiss the complaint predicated on an unconstitutionally vague municipal ordinance (193-1, Chicago Municipal Code) on its face violating the Due Process clause of the 14th Amendment to the U. S. Constitution and Article II sec. 2 of the Illinois Constitution.

[13] 2. The court erred as a matter of law by inferring in its opening statement to the jury that the opening statements of counsel on both sides may be considered as evidence.

3. The court erred at various points in the trial by giving a weak admonition to the jury to avoid news media likely to prejudice them in the case, thereby compromising defendants' right to fair jury trial guaranteed by amendments VI, VII, XIV to the U. S. Constitution and Article II, secs. 2, 5 and 9 of the Illinois Constitution.

4. The court erred by denying defendants' motion for mistrial made on the grounds that the selection of veniremen and the ultimate selection of jurors by the prosecution systematically excluded Negroes from the jury in violation of defendants' rights guaranteed by the 6th, 7th, and 14th Amendments to the U. S. Constitu-

tion and by Article II, secs. 2, 5, 9 of the Illinois Constitution.

5. The court erred by ruling that picketing by the defendants was in a residential area and therefore not protected by the 1st and 14th Amendments to the U. S. Constitution.

6. The court erred in law and in violation of the 1st and 14th Amendments to the U. S. Constitution and Article II, secs. 2 and 4 of the Illinois Constitution by refusing, over defendants' objections, to allow evidence relating to the conduct of the spectators viewing the defendants' conduct on the evening of August 2, 1965 to be presented to the jury, including, but not limited to, the following instances:

a) court refusal to allow evidence to be presented to the jury on the types of profanity used by the spectators;

[14] b) court refusal to allow evidence to be presented to the jury that signs of spectators were printed;

c) court refusal to allow evidence to be presented to jury that group of spectators was an organized group of counter demonstrators;

d) court refusal to allow evidence to be presented to the jury on the exact period of time during which the crowd of spectators increased in size, and the speed of that increase;

e) court refusal to allow evidence to be presented to jury that spectators deliberately turned water sprinklers on the defendants;

f) court refusal to allow evidence to be presented to jury that spectators were neighbors of Mayor Daley;

g) court refusal to allow evidence to be presented to jury that a band played insulting songs during the evening of August 2 where defendants were picketing.

7. The court erred in law and in violation of the 1st and 14th Amendments to the U. S. Constitution and Article II, secs. 2 and 4 of the Illinois Constitution by refusing, over defendants' objections, to allow evidence to be presented to the jury relating to the efforts of the police to control the spectators who viewed the defendants' alleged actions on the night of August 2, 1965; including, but not limited to, the following instances:

a) court's refusal to allow evidence to be presented to the jury that police made little or no efforts to disperse spectators;

[15] b) court's refusal to allow evidence to be presented to the jury that police made no efforts to arrest nor did they actually arrest any spectators;

c) court's refusal to allow evidence to be presented to the jury that police took no action in response to complaints from the defendants about conduct of spectators;

d) court's refusal to allow evidence to be presented to jury that police on scene received no meaningful orders from their superiors to control the spectators;

e) court's refusal to allow evidence to be presented to jury on police efforts to get additional help to control spectators;

f) court's refusal to allow evidence to be presented to jury on the number of police present in the

alleged area of defendants' activity at the time the spectators allegedly were close to rioting;

g) court's refusal to allow evidence to be presented to jury on orders given by police during the evening of August 2, 1965 to the spectators viewing defendants' picketing;

h) court's refusal to allow evidence to be presented to jury on capacity of police to handle spectators on the evening of August 2, 1965 in the general area of defendants' alleged actions;

i) court's refusal to allow evidence to be presented to jury on the extent to which police at the scene were diverted from duty by television cameras and news media;

[16] j) court's refusal to allow evidence to be presented to jury on the exact time at which police considered the defendants guilty of disorderly conduct under sec. 193-1 of the Chicago Municipal Code;

k) court's refusal to allow evidence to be presented to the jury that Commander Howard Pierson had slated at the time of the defendants' arrest that he always arrested the cause and not the mob in such situations.

8. The court erred in law by allowing evidence to be presented to the jury, over defendants' objections, on the conduct and purposes of the defendants prior to the time they entered the general area of the arrest on the evening of August 2, 1965; including, but not limited to, the following instances:

a) court allows evidence to be presented to the jury on conduct of defendants at Buckingham Fountain at approximately 4:00 P.M. on August 2, 1965;

b) court allows evidence to be presented to the jury about defendants' conduct on demonstrations prior to August 2, 1965;

c) court allows evidence to be presented on the purposes of the defendants prior to the time of their arrest on the evening of August 2, 1965.

9. The court erred in law and in violation of the 1st and 14th Amendments to the U. S. Constitution and Article II, secs. 2 and 4 of the Illinois Constitution by refusing, over defendants' objections, to allow evidence to be presented to the jury on the conduct of the spectators subsequent to the arrest of the defendants on the night of August 2, 1965.

[17] 10. The court erred in law and in violation of the 1st and 14th Amendments to the U. S. Constitution and Article II, secs. 2 and 4 of the Illinois Constitution by refusing, over defendants' objections, to allow evidence to be presented to the jury that the defendants had given notice to the police that they would picket in the general vicinity of 35th and Lowe in Chicago, Illinois on the evening of August 2, 1965; that the defendants and the police and Corporation Counsel of Chicago had a prior agreement that the picketing of the defendants would be permitted; and that the defendants had various conversations prior to their arrival in the vicinity of their subsequent arrest on the evening of August 2, 1965 with various police officers and representatives of the Corporation Counsel of the City of Chicago.

11. The court erred in law by refusing, over defendants' objections, to allow evidence to be presented to the jury about the purposes of the defendants' demonstrations in the general vicinity of 35th and Lowe in Chicago, Illinois at the time of their subsequent arrest in the evening of August 2, 1965.

12. The court erred in denying defendants' motion, made at the conclusion of the prosecution's evidence, for a directed verdict; which motion was made on the grounds that no evidence, upon which reasonable men could disagree, proved that the defendants violated sec. 193-1 of the Chicago Municipal Code.

[18] 13. The court erred in violation of the 14th Amendment to the U. S. Constitution and Article II, sec. 2 of the Illinois Constitution by denying defendants' motion, made at the conclusion of the prosecution's evidence, to dismiss the complaint because it was based on an unconstitutionally vague ordinance of the Chicago Municipal Code (193-1) and was itself unconstitutionally vague.

14. The court erred by denying defendants' motion, made at the conclusion of the prosecution's evidence, to dismiss the complaint; which motion was made on the grounds that sec. 193-1 of the Chicago Municipal Code violated on its face the 1st and 14th Amendments to the U. S. Constitution and Article II, secs. 2, 4, and 17 of the Illinois Constitution.

15. The court erred by denying defendants' motion, made at the conclusion of the prosecution's evidence, to dismiss the complaint; which motion was made on the grounds that the prosecution sought to apply sec. 193-1 of the Chicago Municipal Code to this case in a manner

contrary to the 1st and 14th Amendments to the U. S. Constitution and contrary to Article II, secs. 2, 4 and 17 of the Illinois Constitution.

16. The court erred in law and in violation of the 14th Amendment to the U. S. Constitution and Article II, sec. 2 of the Illinois Constitution by permitting prosecution to inform the jury that the defendants were also guilty of violating sec. 433 of the Chicago Municipal Code.

17. The court erred in violation of the 1st, 6th, 7th and 19th Amendments to the U. S. Constitution and Article II, secs. 2, 4, 5, 9, and 17 of the Illinois Constitution by refusing to instruct the jury on the 1st and 14th Amendments to the U. S. Constitution and Article II, secs. 4 and 17 of the Illinois Constitution.

[19] 18. The court erred in law and in violation of the 6th, 7th, and 14th Amendments to the U. S. Constitution and Article II, secs. 2, 5 and 9 of the Illinois Constitution by refusing to give to the jury the following written instruction tendered by defendants:

> You are instructed that your verdict in this case must be based upon the evidence. You must not speculate, nor conjecture, nor guess as to the facts in this case. If your finding as to any fact in this case can be made only upon a conjecture, or speculation, or guess, then you must find that such fact, if any, has not been proved.

19. The court erred in law and in violation of 6th, 7th, and 14th Amendments to the U. S. Constitution and Article II, secs. 2, 5, and 9 of the Illinois Constitution by refusing to give to the jury the following written instruction tendered by defendants:

> The court instructs the jury that when a defendant elects to take the witness stand and testify, then you have no right to disregard his testimony merely because he is accused of violating an ordinance. When he does testify, he at once becomes the same as any other witness, and his credibility is to be tested by and subjected to the same tests as are legally applied to any other witness.

20. The court erred in law and in violation of the 6th, 7th and 14th Amendments to the U. S. Constitution and Article II, secs. 2, 5, and 9 of the Illinois Constitution by refusing to give to the jury the following written instruction tendered by the defendants:

> If you believe from the evidence that any witness in this case has knowingly and willfully testified falsely on this trial to any matter material to the issues in this case, then you are at liberty to disregard the entire testimony of such witness, except insofar as it has been corroborated, if you find it has been corroborated by other creditable evidence or by facts and circumstances proved on the trial.

[20] 21. The court erred in law and in violation of the Sixth, Seventh, and Fourteenth Amendments to the United States Constitution and Article II, sections 2, 5, and 9 of the Illinois Constitution by refusing to give to the jury the following written instruction tendered by defendants:

> The burden of proving every material allegation necessary to establish the defendants guilt rests upon the City throughout the trial, and the burden of proof never shifts to the defendant.

22. The court erred in law and in violation of the Sixth, Seventh, and Fourteenth Amendments to the United States Constitution and Article II, sections 2, 5, and

9 of the Illinois Constitution by refusing to give to the jury the following written instruction tendered by defendants:

> The Jury is instructed that when the circumstances, alone, are relied upon by the City for a conviction, the circumstances must be such as are reconcilable with no other reasonable hypothesis than that of the defendants' guilt and must satisfy the mind of the Jury of the Defendants' guilt by a clear preponderance of all the evidence.

23. The court erred in law and violation of the Sixth, Seventh, and Fourteenth Amendments to the United States Constitution and Article II, sections 2, 5, and 9 of the Illinois Constitution by permitting the prosecution to suggest to the jury, in closing statements, that the jury was obligated to decide issues of law; including, but not limited to, the following instances:

a) Prosecution stated that the playing of musical instruments by spectators is irrelevant to the case.

b) Prosecution stated that the content of defendants' signs is irrelevant to the case.

[21] c) Prosecution stated that sprinklers were irrelevant to the case.

d) Prosecution stated that the jury must find the defendants guilty if the residents of the area in which they marched were disturbed.

e) Prosecution stated the conditions under which pickets may demonstrate in a residential area.

f) Prosecution stated that no one including the defendants had absolute rights.

g) Prosecution question put to jury about whether or not home-owners have a right to be secure in their homes.

h) Prosecution suggested jury's job was to interpret Section 193-1 of the Municipal Code of Chicago.

i) Prosecution stated that people are allowed to convey ideas by way of signs, even vile signs.

j) Prosecution asks jury what the rights of people in a residential area are and what effects defendants' conduct might have, if unchecked.

k) Prosecution stated that police request of defendants to stop picketing was reasonable.

24. The Court erred in law and in violation of the Sixth, Seventh, and Fourteenth Amendments to the United States Constitution and Article II, Sections 2, 5, and 9 of the Illinois Constitution by permitting the prosecution, in closing statements to the jury, to improperly introduce evidence to the jury unsupported by the introduction of evidence during the course of the trial; including, but not limited to, the following instances:

a) Prosecution stated that the City of Chicago was never apprised beforehand that defendants were going to picket.

[22] b) Prosecution stated it was impossible for police to find the people who were throwing stones and eggs at the defendants from the crowd of spectators.

c) Prosecution stated that it was impractical, if not impossible, for the neighbors to stop their sprinkler system and leave their porches when the picketing started.

d) Prosecution stated that Dick Gregory was not a responsible leader.

25. The court erred in law and in violation of the 1st, 6th, 7th, and 14th Amendments to the U. S. Con-

stitution and Article II, secs. 2, 4, 5, 9, and 17 of the Illinois Constitution by giving the following instruction to the jury, over defendants' objections:

> 193-1. All persons who shall make, aid, countenance, or assist in the making of any improper noise, riot, disturbance, breach of the peace, or diversion tending to a breach of the peace, within the limits of the City; all persons who shall collect in bodies or crowds for unlawful purposes or for any purpose, to the annoyance or disturbance of other persons . . . shall be deemed guilty of disorderly conducts.

26. The court erred in law and in violation of the 1st, 6th, 7th, and 14th Amendments to the U. S. Constitution and Article II, secs. 2, 4, 5, 9, and 17 of the Illinois Constitution, by giving the following instruction to the jury, over defendants' objections:

> Section 36-31. No parade shall be allowed on any public way, nor shall any open air public meeting be held in or upon any public way, until a permit in writing therefor shall be first obtained from the Department of Streets and Sanitation. . .

27. The court erred in law and in violation of the 1st, 6th, 7th, and 14th Amendments to the U. S. Constitution and Article II, secs. 2, 4, 5, 9, and 17 of the Illinois Constitution by giving the following instruction to the jury, over defendants' objections:

> [23] The Jury is instructed that the fact that persons other than these Defendants may or may not have violated any laws or may or may not have been arrested should not be considered by you in determining the guilt or innocence of these defendants.

28. The court erred in the law and in violation of the 1st, 6th, 7th, and 14th Amendments to the U. S. Con-

stitution and Article II, secs. 2, 4, 5, 9, and 17 of the Illinois Constitution:

> If any evidence has been presented, or any argument made by either attorney which does not go to the credibility of a witness, or contribute a scintilla toward an inference proving or disproving that a Defendant did make, or aid in making an improper noise, riot, disturbance, breach of the peace, or diversion tending to a breach of the peace within the limits of the City of Chicago on August 2nd, 1965, as charged in the City's complaint, or that a Defendant collected in a crowd or body for unlawful purposes, or for a purpose to the annoyance or disturbance of other persons within the limits of the City of Chicago on August 2nd, 1965, as charged in the City's complaint, you are instructed that such evidence or argument is of no probative value and shall not be considered by you in any respect.

29. The court erred in the law and in violation of the 1st, 6th, 7th, and 14th Amendments of the U. S. Constitution and Article II, secs. 2, 4, 5, 9, and 17 of the Illinois Constitution:

> You are instructed that it is not necessary that the City prove the guilt of any Defendant beyond all reasonable doubt. However, it is the burden of the City of Chicago to prove the guilt of each defendant by a clear preponderance of the evidence.

30. The court erred by failing to explicitly order that proffered but rejected instruction be made part of the official court file in this case.

31. The judgment of the court is contrary to the 1st, 5th, 6th, and 14th Amendments to the U. S. Constitution and Article II, secs. 2, 4, 5, 9, and 17 of the Illinois Constitution.

32. The judgment of the court is contrary to law and in violation [24] of the 14th Amendment to the U. S. Constitution and Article II, sec. 2 of the Illinois Constitution because such judgments, contrary to the constitutional rights of the defendants, was not entered by an independent judicial officer.

33. The verdict and judgment are contrary to law.

34. The verdict and judgment are contrary to the evidence.

35. The verdict and judgment are contrary to the manifest weight of the evidence.

(Signature and Address of Defense Counsel)

[25] (Order Denying Post-Trial Motions Dated February 10, 1966)

[27] (Caption)

NOTICE OF APPEAL

1. Dick Gregory, Gean Gregory, Charles Gant, William Dixon, Howard Barber, appellants above named, hereby appeal from the judgment entered against them as co-defendants in the above cause on November 15, 1965 whereby it was adjudged that the defendants were found guilty and fined $400.00 for violating two paragraphs of section 193-1 of the Municipal Code of Chicago, in that they (1) "make, aid, countenance, or assist in making any improper noise, riot, disturbance, breach of the peace, or diversion tending to a breach of the peace, within the limits of the city"; and in that they did (2) "collect in bodies or crowds for unlawful purposes, or for any purpose, to the annoyance or disturbance of other persons."

[28] 2. Defendants-appellants further hereby appeal from the order entered against them as co-defendants in the above cause on February 10, 1966 denying defendants-appellants relief on a post-trial motion to arrest judgment and dismiss the cause, or in the alternative to vacate judgment and order a new trial.

3. Defendants-appellants pray that the judgment of November 15, 1965 in the above cause be reversed in its entirety, or in the alternative that said judgment be vacated in its entirety and a new trial ordered.

4. Defendants-appellants further pray that the order of February 10, 1966 denying defendants-appellants' post trial motion in the above cause be reversed in its entirety.

(Name and Address of Counsel)

Dated: March 10, 1966

[33] (Notice of Filing Notice of Appeal)

[35] (Praecipe for Trial Court Record)

[42] (Order Approving Two Volume Report of Proceedings)

(EXCERPTS OF TRIAL RECORD)

[69] * * *

Mrs. Williams: Briefly, I had intended to put this in writing, and the lawyers are still arguing about it.

Briefly, I would like to make a motion to dismiss the Defendants, because the ordinance here involved, the disorderly conduct ordinance is unconstitutional in that it is vague, it is general, [70] it does not clearly define the act or acts which are considered to be offenses

and breaches of said ordinance. I cite the Terminiello Case, 69 Supreme Court 874, Terminiello versus City of Chicago, and also the—well, at this time, I will cite the Terminiello Case. I can't find the other notes I have.

In the Terminiello Case, it did, as the Court knows, revolve around an instruction which the Court refused to give; however, by way of dicta, the Court did give, in its opinion, a statement to the effect that this ordinance was broad, general, vague, indefinite, and does not clearly apprise a Defendant charged with such an offense of the act or acts which he is accused of doing. For that reason, I am stating that we contend that this 193-1 is unconstitutional, and I might state—off the record.

(Whereupon, there was an off the record discussion.)

The Court: Very well.

Mr. Elrod: As to the complaints or the ordinance—.

The Court: The motion will be denied, and [71] your exception will be noted for the record.

Off the record.

(Whereupon, there was an off the record discussion.)

Mr. Elrod: If I might make a statement for the record—

The Court: All right.

Mr. Elrod: (Continuing) —the prosecution, herein, would like to point out to the Court that there has been no request or motion for a bill of particulars, filed, so as to inform these Defendants as to what they did or did not do, if the Complaint does not state such act with specificity, if required. I take it, therefore, the Defendants are apprised of the date, the time, the location

and the acts which they did which gave rise to their alleged misconduct. I use the term alleged—

Mrs. Williams: The City Council never intended for a bill of particulars to be used to clarify an ordinance. It should not be necessary for a bill of particulars to clarify it, at all.

The Court: Well, we are going into a matter which is removed so far—off the record.

(Whereupon, there was an off the record discussion.)

* * * *

[74] *Opening Statement by Mr. Elrod.*

Ladies and gentlemen, if Your Honor please, Counsel: You have heard a lot of questions asked of you, as prospective Jurors, as to your opinions and beliefs. We weren't trying to pry, and I am sure Mrs. Williams was not trying to pry into your personal background. What is important, at this time, and in all Jury cases, is that we have a fair and impartial Jury.

You heard a lot of questions asked about demonstrations. Have you ever been in a demonstration? Have you ever—

Mrs. Williams: Pardon me.

I want to ask that the witnesses be excused from the Courtroom.

The Court: Are there witnesses here?

Mrs. Williams: Yes.

The Court: All witnesses in this case, whether [75] for the City or for the Defense, step from the Courtroom.

Mr. Elrod: If Your Honor please, I ask that the complaining witnesses be allowed to stay in the Courtroom.

Mrs. Williams: During the opening statements?

Mr. Elrod: At all times.

Mrs. Williams: The complaining witnesses?

Mr. Elrod: There are two, Officer Green and Officer Patterson.

The Court: They may remain.

I will have to look at you Counsel, because I won't be aware of your witnesses. This will be your responsibility, to see that they are not in the Courtroom.

Mr. Elrod: Yes, and that applies to the Defense witnesses.

The Court: Defendants and the City's.

Mr. Elrod: (Resuming opening statement.)

You have just seen an example of legal process. Mrs. Williams made a motion, and the Judge allowed the motion to exclude witnesses.

Again, we are not trying to keep anything from you. There might be some delay in the procedure [76] of this particular case, and I am urging you not to hold it against either Counsel, because there are rules of evidence that we must follow. There are rules of law, and the Judge will rule on them. It is not so that you won't be enlightened, or so the witnesses will not know what happens. These are rules. There are good reasons for them, and the Judge will so instruct you, as to the reasons for many of these rulings, at the time when he gives you his instructions.

To get back to where I was, you were asked questions about demonstrations, and you might have a belief that these Defendants, and there are five in number, were arrested because they were demonstrating, or were arrested because they were marching. That is not true. The City will prove, through competent witnesses, through numerous police officials that were present on the scene

—this was August 2nd, 1965, a Monday night—that these five Defendants and numerous other people were marching, that they started marching at Buckingham Fountain, that they went to City Hall, that they went to the vicinity of 35th and Lowe, that the Mayor of the City of Chicago lived at 35th and Lowe, [77] and that when they arrived at this location, there were approximately sixty to eighty people. The witnesses will tell you exactly the number they saw, and observed, and that they counted.

We will prove that they were singing various songs and chants about the general Superintendent of Public Schools, such as, the Mayor must fire him, "We want freedom," and "We Shall Overcome." Numerous songs were sung during this time in the vicinity of 35th and Lowe. In fact, when they reached the vicinity of 35th and Lowe, these marchers marched from 35th Street to 36th Street on the west side of Lowe Avenue, they proceeded west on 36th Street to Union, which is one block west of Lowe Avenue, they then proceeded on Union Avenue to 35th, and then to Lowe, and pursued that route approximately three or four times, singing and chanting rather loudly.

Each time that this march proceeded around this square city block, numerous residents—and parenthetically it will be brought out that this area is a residential area—by residential, I don't mean that there are palatial mansions that are in existence in this area. I mean that people [78] live here. It is not a downtown area. It is not a factory area. It is not an area where people work, primarily. There are some stores in this area, but it is a place of residences.

At approximately eight o'clock to nine-thirty—it was a warm summer night—they marched around this circle

like the Pied Piper of Hamlin. There were perhaps two thousand neighbors that walked out of their houses. They came out of their houses and taverns, in this area, and they were a little bit upset at the fact that people were marching. What they were saying is not relevant here. What they were espousing, or what their cause was is not relevant here, but approximately five minutes to eight, p.m., to approximately eight-twenty or twenty-five, p.m., these marchers were walking around in this residential area, singing loudly, chanting loudly, clapping their hands, and carrying signs saying "Willis Must Go. Defacto Less Make to Segregation." The witnesses will tell you what the signs were. You will hear witnesses that were given various police assignments. One witness will testify to what he saw and observed at the corner of 35th and Lowe. Another witness [79] will testify as to what he saw and observed at the corner of 36th and Lowe. Another witness will testify as to what he saw and observed at 36th and Union. The other witness will testify as to what he saw and observed at 35th and Union.

You will see by the testimony, ladies and gentlemen, that this was not an ordinary situation. In fact, it was rather extraordinary. The police were there. There were approximately eighty to ninety in number, to protect these particular marchers. To protect them against what? And this will also be shown, that this was a very hostile group. Not the marchers, necessarily, but the people in the crowd, the spectators. The neighbors were very hostile.

You were asked questions by Mr. Holt or Mrs. Williams, as to whether you would be too sensitive to hear this kind of language. It points out this hostility, at this time. There were at least eighty to ninety police officers

there to protect the people, the marchers walking around a city block.

You will also hear testimony that there was no permit issued for any march, on any public [80] way, which includes sidewalks in this area, at this time.

You will hear testimony that the Commander in charge of this particular district, Commander Pierson, asked at one time—it was approximately nine o'clock, p.m.—he asked Mr. Gregory, who was standing in front of this line of march—that is, Dick Gregory, to please, if he could, leave this area, "We would appreciate it."

You will hear testimony that the response, at that time, was negative. You will hear testimony that approximately after six times around this square block, the police had set up a certain type of enforcement procedure. They would station police officers around this square block, and things weren't doing too badly until approximately nine o'clock, p.m. This line of march, led by one of the Defendants, proceeded through this police line and proceeded walking south on Lowe Avenue, south on Lowe Avenue to 37th Street. In fact, they walked through approximately two to five hundred people at the corner of 36th and Union—Lowe. They walked south to 37th Street, where there is an undertaking parlor, McKeon's undertaking [81] parlor, and there was a wake in progress. People were outside this undertaking establishment. This was about nine o'clock, after they had circled this other block for about six or seven times.

You will see that the crowd, by that time, nine o'clock, p.m., it had built up to such a pitch that there was dire concern for the protection of the people of the City of Chicago. Be they marchers, be they spectators, be

they hecklers, or innocent bystanders, there was concern.

You will hear testimony that Commander Pierson, approximately at nine-twenty, again stopped this line of march, those sixty people that were there at this time, and asked them, with the use of a portable loud speaker, otherwise known as a bullhorn, he asked them to please leave the area, their presence was creating a dangerous situation. He didn't say that once, so that maybe one person would hear it. He said it three, four, or five times, so that everyone in that march heard it. You will see that people maybe a half a block away heard this order and plea by the commander.

[82] You will hear testimony that one of the Defendants, who is not here right now, asked and told his people not to leave this area. You will hear, in fact, that three or four people, upon the request of the Commander who was in charge of the police at this time, did leave. He offered police protection out of this area.

Ladies and gentlemen, these people are not charged with marching, with parading, with espousing any cause, however laudable. They are charged with a diversion tending to a breach of the peace. What diversion was this? Their presence. Not their mere presence, but their presence after being apprised of a dangerous situation. Their presence after being asked to leave by a Commander of police, who you will see has been on the force for over thirty years. He asked them, and apprised the Defendants of the dangerousness of their continued presence there, and they refused to leave.

What is the City to do? And I ask you to consider this while you are considering the testimony. Are they to wait until there is violence? Wait until there is bloodshed? Commander Pierson [83] asked them, not ordered them, but he asked them, and later on told them,

"If you don't leave, I will have to place you under arrest."

You will hear this from the witness stand, and they refused to leave. They refused to leave at that point.

On cross examination, the Defendants' attorney might ask the question, "Why didn't you arrest the people who were yelling—"

Mrs. Williams: Oops. If the Court please—

The Court: Sustained.

Mr. Elrod: The police officer, you will see, had to make a decision at this time. His decision was to ask these marchers to leave. They refused to leave, and they were arrested or charged with a violation of the municipal ordinance. They weren't charged with murder or rape. They were charged with a disorderly conduct charge, which states one of the counts is a diversion tending to a breach of the peace. They were charged with collecting in a crowd or body for an unlawful purpose, or for the purpose of the annoyance or disturbance of other persons. These are ordinances in the City of Chicago. You will be instructed as to what the law [84] is.

Ladies and gentlemen, I ask you to consider this case in its true import. I ask you not to consider this case as to what the cause was that these Defendants were espousing. I ask you not to consider this case as to the fact that they were marching in any area in the City of Chicago. I ask you to consider this case, as the evidence will indicate, that there was a problem here, a dangerous problem, and it had to be stopped at that point.

I ask you to consider this. I ask you to consider that there was a Commander, a police officer there to afford protection to these marchers, and what he did at that

time, and what these Defendants did not do, what these Defendants refused to do. They refused to leave an area where there was a dangerous situation, where there was a riotous condition that was prevalent. They refused to leave.

There is an ordinance stating that a diversion tending to a breach of the peace is against the City Code, against the law. They were charged with this, and I ask you to, after hearing the evidence, find them guilty of this charge.

[85] *Opening Statement by Mrs. Williams.*

Mr. Elrod, The Court, Ladies and Gentlemen of the Jury:

Opening statements, as you probably know, are for the purpose of giving you a capsule view of what the drama to be unfolded from that witness stand will be. The prosecution, or the City, in this case, tells you what they intend to prove, and the Defense tells you either what they intend to prove, or what they do not believe will be the proof. As Shakespeare said, "All the World Is A Stage." Now, we are on a stage, and we are giving you a preview of what the drama will be from that witness stand.

Number one, we believe that from the evidence which will come from that witness stand, from the City's side and from the side of the Defendants, the evidence will show, number one, that people picketing is allowable in the United States of America, and in the City of Chicago. We believe that the evidence will show that these Defendants, along with others in a group of whom I was a member, and of whom Mr. Elrod was a member,—

[86] Mr. Elrod: Objection, Your Honor.

I wasn't a member of a group that was marching.

Mrs. Williams: I will withdraw that.

(Continuing) —among whom were accompanied by Mr. Elrod and myself, went to 35th and Lowe at approximately the hour of seven or seven-thirty, p.m., on August 2nd, 1965.

May I see a copy of the complaint, if the Court please.

The Court: Yes.

Mrs. Williams: Thank you.

We further believe that the evidence will show that these Defendants were singing, "We Shall Overcome Someday, deep in my heart I firmly believe that we shall overcome, someday." We further believe that the evidence will show that when the Defendants arrived at 35th and Lowe, there was a small group of approximately fifty to sixty people standing in the vicinity of 35th and Lowe. We further believe that the evidence will show that in accordance with an agreement worked out the previous night between the Corporation Counsel, the police department, and one of the Defendants [8] here, it was understood and agreed upon that the Defendants and the people in their company would cease to sing at eight-thirty, p.m. We further believe that further evidence will show that at eight-fifteen, p.m., on the night of August 2nd, 1965, the Defendants ceased to sing, and they only exercised their rights as American Citizens.

Mr. Elrod: If Your Honor please, I would like to render an objection, at this time, as to discussions of what rights the Defendants had or did not have.

The Court: I will sustain the objection.

Mrs. Williams: All right.

Mr. Elrod: Thank you.

Mrs. Williams: We further believe that the evidence will show that these Defendants continued to picket

peacefully, making no noise, in fact, whispering to each other, in order to comply with the ground rules worked out the previous night.

We further believe the evidence will show that at approximately seven-thirty, p.m., on August the 2nd, 1965, a ten-piece band congregated on the corner of 36th and Union and played "Dixie".

We further intend to prove, and believe [88] the evidence will show that at approximately eight-thirty, p.m., a group of people, not associated with the Defendants sang the song, "I wish I were an Alabama Trooper, that is what I really would like to be, because if I were an Alabama Trooper, I could kill the niggers, legally."

We further believe the evidence will show that these Defendants, and those in their company, uttered no sound as those songs were being played and sung. They sang no songs as those songs were being played and sung, and they made no comments as those songs were being played and sung.

We further believe the evidence will show that these Defendants while in the presence or in the vicinity of 36th and Lowe were carrying signs, but we believe that we will go one step further than the prosecution has told you, and prove from this witness stand that those who were not associated with the Defendants also had signs saying, "Nigger, go home," saying, "Ku Klux Klan," saying, "We don't want you here."

We further believe the evidence will show, on behalf of the defense, that at no time was any [89] effort made by the police department, whom the prosecution tells you were sent to protect the Defendants, at no time was any member of the ten piece band arrested, at no time were any of the chorusers singing the Alabama Trooper song

arrested, and at no time was any person in the vicinity arrested for any act or acts, which will be proved from this witness stand, other than these three Defendants, and the other two who will be joining them shortly, and the others accompanying them; no one except these Defendants who are black like me, not white like you.

We further believe the evidence will show that on the 2nd of August, 1965, while not singing, one or more of these Defendants, along with others who accompanied them in that neighborhood, were spat upon, were hit in the head with rocks, and were otherwise physically abused, and we further will prove from that witness stand that not one person who struck any of the Defendants, or the others who are not here before you, not one person was arrested, only those who presented their bodies to be spat upon and to be physically abused were arrested by those who sought to protect them, as [90] the Corporation Counsel said.

We further believe that the evidence will show there was a dangerous situation at 35th and Lowe, at 36th and Lowe, and at 35th Street between Union and Lowe, but we believe that the evidence will prove conclusively to each of you that the dangerous situation was not what the Defendants were doing, but because the Defendants were black. That is the only danger that was building up.

We further believe that the evidence will show that these Defendants were not arrested because they were disturbing the peace. We believe that the evidence will show that Commander Pierson first talked with one of the Defendants, Dick Gregory, in the presence of his lawyer, who happens to be Jean Williams, and that Commander Pierson said, "We cannot control this mob."

We believe that the evidence will further show that Commander Pierson said, "Not your noise, but your presence here is causing a dangerous situation."

The evidence will also show that Commander Pierson asked, "Will you walk around the block? We will allow you to walk around the block one more [91] time, and then when you hit 35th Street, continue to walk east and leave the neighborhood, and let the crowd cool down."

We further believe that the evidence will show, at that point, that one of the Defendants, Dick Gregory, asked, "Does the Constitution allow me to walk?" And we believe that the evidence will show that the answer made by Commander Pierson to that statement that was made to him was, "That is not the point."

So, ladies and gentlemen, the question here is not, were these Defendants disorderly by their walking and singing. The question here is, does a black man have a right to walk in the vicinity of Bridgeport, and for that reason, the attorneys on behalf of the Defense questioned each of you at length, not for the purpose of denying to you your right to dislike me or your right to dislike a black man simply because of the color of his skin, but for the purpose of determining whether or not there were twelve fair and impartial jurors who could and would listen to this case with an open mind, and give to the Defendants, to the City of Chicago, to the State of Illinois, and to the [92] United States of America the decision of whether or not walking in silence around 35th and Lowe, the home of the Mayor of the City of Chicago, who is the mayor day and night, whether or not this act is considered to be disorderly conduct.

At the beginning of our inquiry, each of you said you had an open mind, that you could listen to this case,

that you could render a fair decision. We believed you then, and we necessarily must believe you now. We only ask you to listen to all of the evidence, and then give your decision for the world to hear.

Thank you.

[100] • • •

Mrs. Williams: If the Court please, we will stipulate that there was no application for a permit, and that there was no parade permit, in fact, issued. We will stipulate to that.

Mr. Elrod: Thank you.

The Court: All right.

You may step down, sir.

(Witness excused.)

Mr. Elrod: I would like to call my next witness, if Your Honor please.

The Court: You may.

Mr. Elrod: If you will excuse me, I will bring [101] him right out.

The Court: Raise your right hand and be sworn.

(Whereupon, the witness was duly sworn by the Clerk.)

The Court: Be seated.

WILLIAM HOUGESON, called as a witness herein, by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Elrod.

Q. State your name, please.

A. William Hougeson.

Q. Where do you reside?

A. 6541 West 63rd Place.

Q. Is that the City of Chicago?

A. City of Chicago.

Q. What is your business or—

A. Lieutenant on the Chicago Police Department.

Q. Lieutenant, how long have you been so employed?

A. For ten years.

Q. You have been with the Chicago Police Department for ten years?

[102] A. Yes, I have.

Q. How long have you held your present rank as Lieutenant?

A. For one year.

Q. Previously thereto, what were your duties and responsibilities with the Chicago Police Department?

A. I have been assigned to the Detective Division, the Vice Control Division, Patrol Division, working in various districts throughout the City.

Q. Have you held previous ranks?

A. The rank of Sergeant, for four years.

Q. Prior to holding the rank of Sergeant—

A. (Interposing) —I was assigned as detective for about the period of one year, and as a patrolman for four years.

Q. Lieutenant, what is your present assignment?

A. I am presently assigned to the 18th District.

Q. Calling your attention to August 2nd, 1965, what was your assignment on that date?

A. I was detailed to the Task Force of the Chicago Police Department, assigned to provide protection to a group of people that were going to march.

[103] Q. Lieutenant, would you explain to the ladies and gentlemen of the Jury, and the Court, what the Task Force of the Chicago Police Department means?

A. It is a unit that is assigned throughout the district to provide police services that require more policemen

than the individual district can handle. If there is a high crime rate in an area, then a task force is assigned to help combat this high crime rate. They work the details, handling crowds at public events, sporting events, and that is about what—

Q. Is there any special training required to be assigned or to become a member of the Task Force of the Chicago Police Department?

A. No.

Q. There is no special training, as such?

A. No, sir.

Q. Is this by assignment or by voluntary basis?

A. Most of the men have voluntarily entered into the Task Force. There are some areas or units within the Task Force that require special training. They have men assigned to the Canine Corps or the Evidence Technician Section that receive training in those [104] specific fields.

Q. Lieutenant, in your years on the police force, have you ever received any accommodations or citations?

A. Yes, two years ago I received an honorable mention for an investigation that I supervised.

Q. Lieutenant, again calling your attention to the 2nd day of August, 1965, will you state what you were doing on that day, and what was your command at that time?

A. Yes, sir. I was assigned to supervise a group of forty Task Force Police Officers and four Sergeants at four o'clock in the afternoon, four, p.m., on that day. At that time, I went to Buckingham Fountain—

Mrs. Williams: Objection, if the Court please, to the answer.

May I see the complaint?

Thank you, Judge.

My objection, if the Court please, goes to what took place at Buckingham Fountain. These Defendants are

accused and called upon to answer what took place at 35th Street, between Lowe and Union. What took place at Buckingham Fountain at four o'clock in the afternoon is not germane to this issue.

[105] The Court: Your objection—very well, I will sustain the objection.

Mr. Elrod: If Your Honor please, one of the counts in this complaint is, that these Defendants collected in a crowd or body for an unlawful purpose, and for the purpose—and for a purpose to the annoyance or disturbance of other persons. To ascertain purpose, I think it is necessary to go back to the time of the collection, and Lieutenant Hougeson can bring out any pertinent facts as to their purpose at four o'clock, p.m. I think it is important to show whether it carried through to and including—

The Court: Well, for that purpose—

Mr. Elrod: That is the only purpose I had in mind.

The Court: All right.

Mr. Elrod: Thank you.

Q. Proceed, Lieutenant.

The Witness: A. I arrived at Buckingham Fountain, and there, a group of approximately sixty-five people gathered. Richard Gregory was addressing this crowd. During his address he said, "First we will go over to the snake pit. When we leave there, we will go [106] out to the snake's house. Then, we will continue to go out to Mayor Daley's home until he fires Ben Willis."

At about four-thirty, p.m., on that day, the group of about sixty-five people formed up, two abreast, and walked out of the park over to the City Hall, the Chicago City Hall. They left there, and walked south on State Street to 35th Street, west on 35th Street, and at about five minutes to eight on that evening, they arrived at 35th and Lowe. I was met at that intersection by Com-

mander Pierson, the District Commander of the Ninth District, who then assumed command of the police operations, at that time.

When the marchers arrived at 35th and Lowe, there were approximately eighty-five. They were singing and chanting. Some of the marchers were carrying signs which said, "Daley, fire Willis," and "Ben Willis must go," and "Defacto, Desmacto, it is still segregation."

When they arrived at this intersection, they walked south on Lowe Avenue and—

Q. Speak up a little.

A. (Continuing) —they walked south on Lowe [107] Avenue from 35th Street, on the west side of the street, and they were chanting, "Ben Willis must go, Snake Daley, also." They were chanting and singing some of their freedom—some songs, "We Shall Overcome," "We Shall Not Be Moved," and this group of people marched or walked south on Lowe Avenue.

I would say that when we arrived there at five minutes to eight, there were approximately twenty to twenty-five people on the corner. There was a group of about six to eight youngsters on the corner carrying signs, "We Love Mayor Daley." This group of youngsters fell in at the head of the line of marchers, and when requested to by the police, they crossed over to the opposite side of 35th Street.

As the marchers proceeded down Lowe Avenue, towards 36th Street, they were chanting and singing, and the neighbors were coming out of their homes. They continued to walk around the block, and that would be south on Lowe Avenue to 36th Street, west on 36th to Union, north on Union Avenue to 35th, and east on 35th to Lowe, and then south again.

[108] At about twenty minutes of eight, the demonstrators stopped their singing and chanting and walked, then, around the block quietly, without any singing or chanting. With each trip around the block, the number of spectators grew, so at this time, I would say there were five or six hundred people within this area, within the periphery of this block they were encircling, and they were watching. These people were hollering, making derogatory remarks, or directing derogatory remarks to the marchers, and they continued to walk around this block.

Shortly before nine p.m., a large group of people gathered at the intersection of 36th and Lowe. By this time I would estimate the crowd at that intersection to be, perhaps, four to five hundred people. Now, this group of spectators would move, some of them, with the marchers, on the opposite side of the street. Some of them would occasionally fall in ahead of the line of march or behind the line of march. When the group of marchers reached 36th Street, rather than turn west, they walked directly into a large group of people who were standing directly on the southwest [109] corner. They walked through them, and then continued south to 37th Street. At the northwest corner of 37th and Lowe, there is a funeral home—

Mrs. Williams: If the Court please, I am going to object to this.

The Court: To the narrative form of the answer?

Mrs. Williams: Yes.

The Court: It is sustained.

Mr. Elrod: As to what?

The Court: The narrative form.

Mrs. Williams: The narrative.

Mr. Elrod: I was willing to ask him a question at anytime—

Mrs. Williams: Well, why didn't you stop him?

Mr. Elrod: Q. At 36th and Lowe, they were proceeding southbound?

The Witness: A. Yes, sir.

Q. Lieutenant, what was the weather conditions? Was it warm or cold, at this time?

A. It was a pleasant evening. The weather was warm.

Q. Now, you stated that they were proceeding south on Lowe from 36th Street, is that correct?

[110] A. Yes, sir.

Q. Then, what happened?

A. They then continued to walk towards 37th. As they approached the corner, the northwest corner of 37th and Lowe, there is a funeral home located there.

There was a large group of people that had been attending the wake and were standing on the sidewalk—

Mrs. Williams: Objection. It is still narrative. There is a large group of people attending a wake. Unless he can identify each one of them—

The Court: Overruled.

Mr. Elrod: Q. By the way, Lieutenant, were you marching with this group, or by this group, at this time?

The Witness: A. Yes, I was walking alongside of them, going back and forth, going from the front of the line of march to the rear, and across the street, out in the intersection, in an attempt to control the crowd of spectators there, the neighbors that had gathered there.

Q. What did you have on your person, if anything?

[111] A. I had a walkie-talkie radio and a battery operated voice gun, or bullhorn.

Q. What did you do to control the spectators at this time, if anything?

A. I directed the efforts of the police officers to areas where I thought there was a particular problem. I—with

the use of the voice gun—I directed the spectators and neighbors there to move back out of the street. From the rear of the crowd, occasionally, an egg or rock would be thrown at the marchers. I directed people who were falling into the line of march to cross the street, and I generally tried to effect control over the spectators.

Q. Lieutenant, as you reached the northwest corner of 37th and Lowe, what then happened, if anything?

A. Well, this is primarily a residential area, and people—

Mrs. Williams: I object, as not being responsive.

The Court: Sustained. It is not responsive.

Mr. Elrod: Q. What then happened, Lieutenant, with this march or yourself, as you were proceeding [112] with them?

The Witness: A. A larger group of spectators began to gather. People were leaving their homes and coming out into the street. The crowd became more vocal, and it was necessary then to issue an order for thirty police officers that were standing by, to accompany the marchers, to afford them some protection from the rocks and eggs that were being hurled at them by the spectators.

Q. What type of area is this, as far as occupancy is concerned, if you know?

A. Primarily, it is a residential neighborhood. There are a few small businesses, such as a funeral parlor, and a small grocery store on one of the intersections. On three of the intersections there are taverns. The taverns were ordered closed by the District Commander—

Mrs. Williams: Objection to this narrative.

The Court: Sustained.

Mr. Elrod: Q. Were the taverns open at this time?

The Witness: A. No, the taverns were closed, sir.

Q. Lieutenant, as you proceeded west on 37th [113] Street, what happened at that time, if anything?

A. The number of spectators increased. We had a large group of youngsters from the neighborhood running on the opposite side of the street from the marchers. We approached Union Avenue, and the marchers then walked north. They were stopped in the 3500 block of South Union Avenue, between 35th and 36th Street, by Commander Pierson, who spoke to Richard Gregory, who was at the head of the marchers, and Commander Pierson said at that time, "Will you please leave this area, because the hour is late."

Mrs. Williams: I am objecting to this narrative, unless he states who else was present at that time.

Mr. Elrod: We have a defendant who was present.

The Court: I am going to sustain the objection.

Mrs. Williams: We have five other defendants—

Mr. Elrod: Q. In the 3500 block on South Lowe Avenue, when you observed the Defendant, Richard Gregory, talking with Commander Pierson, who else was present, if anyone, at that time, if you remember?

The Witness: A. I was present, and a number of people who were marching, the names of which I [114] do not know.

Q. I am not asking you to give, verbatim, what was said, but do you remember the gist of what was said at that time?

A. Yes, sir.

Q. And what was that?

A. Commander Pierson said, "I am asking you to leave this area, because of the late hour. The situation has become extremely dangerous."

Richard Gregory responded by saying, "We are going to keep on walking, but we are not going to leave."

Q. What then happened, if anything, Lieutenant?

A. With that, the marchers then proceeded again to walk in the same area, from 35th to 36th between Union and Lowe.

Q. And when they went to 35th and Lowe, where did they turn, if they did turn?

A. They turned south on Lowe Avenue, walking towards 36th Street. As I was walking alongside Commander Pierson, I received numerous reports on a walkie-talkie radio, that the anger of the spectators at the four intersections surrounding the block had increased. They had become more boisterous and more quarrelsome, and this information [115] was then given to Commander Pierson, who was walking along with me.

Q. What happened when the line of march reached the intersection or reached the corner of 36th and Lowe?

A. They then turned west on 36th Street, walking toward Union Avenue.

Again, by this time however, the number of the spectators had increased so that there were between one thousand and twelve hundred people within the area.

Q. Which area are you talking about?

A. The block area between Lowe and Union, 35th to 36th.

Q. Approximately how many people were at the intersection of 36th and Union, as they were approaching that intersection?

A. As they were approaching the intersection, I would estimate that there were about three hundred people, and that this number increased as they came closer to—

Mrs. Williams: I object, as that is not responsive.

The Court: Sustained.

[116] Mr. Elrod: Q. And what happened to this number as they continued to approach this intersection?

The Witness: A. The number of spectators increased.

Q. And do you have an approximation as to what number it reached as the marchers did, in fact, reach that corner?

A. To about five hundred, I would estimate.

Q. What, if anything, happened at that corner, Lieutenant?

A. A television camera man flooded the intersection with lights. The crowd of spectators broke through the police lines and were out into the street. The situation—

Q. Did you hear any other noise at that intersection, at that time?

A. There was a group of youngsters with musical instruments. A girl had a set of cymbals, and a boy was playing the trumpet. They were playing songs, singing, shouting, and they were shouting derogatory remarks, threats at the marchers, and throwing eggs and rocks.

Q. Did you see who was throwing these eggs and these rocks, Lieutenant?

[117] A. This was a mass of people. The rocks and eggs were coming from the center of the people, or from—

Mrs. Williams: Objection, as not being responsive. The question was, "Did you see—"

The Court: Sustained.

Mr. Elrod: Q. Your answer is yes or no, as to, "Did you see them?"

The Witness: A. I did not see who threw the rocks or eggs.

Q. Did you attempt to see who threw the rocks, Lieutenant?

Mrs. Williams: Objection.

I withdraw that.

The Witness: Yes, I made an effort to see, by looking in the direction from whence they came. I looked to see who was throwing them.

Q. Lieutenant, what then happened as the—after the marchers—strike that.

After this group broke the police lines, what did the marchers do, if anything?

The Witness: A. Continued walking north on Union Avenue, towards 35th Street.

Q. And then what happened?

[118] A. When the marchers had reached 35th Street, they were stopped by Commander Pierson. Just—excuse me.

Just west of the alley that runs between Union and Lowe Avenue, using a battery voice gun, Commander Pierson requested that they leave the area. The Commander said that the situation had become worse, conditions were then nearing riotous proportions. He said, "I am asking you to leave. Leave this area."

Q. How many times did he repeat the gist of what you just said?

A. This was repeated by the Commander at least three times.

Q. What then happened, Lieutenant?

A. Then the—

Q. After Commander Pierson repeated this at least three times, what happened?

A. Richard Gregory returned to the group of people and addressed them. He said, "We are not going to leave. We will remain here. Let them arrest us."

He walked from the front of the group of marchers through the center and then to the rear [119] of the

group of marchers. Each time, he paused and addressed the same remark to the group of marchers.

Q. Lieutenant, what did Commander Pierson do or say after the Defendant, Richard Gregory, made those statements, if anything?

A. Commander Pierson then said, "Anyone wishing to leave will be provided with a police escort, and escorted out of this area."

Q. What did anybody—what happened after this announcement was made?

A. Three men crossed the alley and took advantage of this police escort out of this area.

Q. What then did Commander Pierson do, if anything, Lieutenant?

A. Commander Pierson then told the spectators that because of the dangerous situation—

Q. Who did he tell this to?

A. The—excuse me—the marchers. The marchers.

(Continuing) Because of the dangerous situation, he would—if they did not leave, he was going to place them under arrest.

Q. Then what happened, if anything?

A. The marchers refused to leave the area. I directed four of the police officers who were [120] assigned, previously, to march alongside the marchers, to arrest those that refused to leave.

They were placed in police vans and transported to the police lock-up at 1121 South State Street.

Q. Lieutenant, at approximately what time of the day or night was this line of march stopped at the alley —just west of the alley that runs between Lowe and Union on 35th Street?

A. I would say at nine-thirty, p.m.

Q. Lieutenant, approximately how many people, other than the marchers, and the police, of course, were present between Union and Lowe, on or near 35th Street, at this time?

Mrs. Williams: Objection, it is not material.

Mr. Elrod: If Your Honor please—

Mrs. Williams: I withdraw the objection.

Mr. Elrod: Q. You understand the question?

How many spectators were on 35th Street, between Union and Lowe, just prior to—

The Witness: A. Approximately five hundred.

Q. Lieutenant, what were the spectators doing, if anything?

A. They were shouting insults at the marchers. [121] They were chanting insults at them. They were throwing rocks, and they were breaking through the police lines, and running out into the street.

Q. Approximately how many police officers were in this vicinity, at this time, if you know?

A. About one hundred police officers.

Q. Lieutenant, you stated that you were the commanding officer in charge of the Task Force personnel?

A. I was until relieved from my command by Commander Pierson, when we entered the area of 35th and Lowe. Then he outranked me, and assumed command of all of the police that were in this area.

Q. Lieutenant, did all of this take place in the City of Chicago, County of Cook, and in the State of Illinois?

A. Yes, sir.

Q. Lieutenant, were you and these other one hundred officers in police uniform at all times that you have spoken about?

A. Yes, sir.

Q. The same type of uniform that you are now wearing?

A. Yes, sir. However, there were several [122] officers there that were not in uniform. I would say about ten police officers that were there were in citizen's dress.

Q. Approximately ninety would be there in uniform?

A. Yes, sir.

Q. Was Commander Pierson in uniform?

A. Yes, sir.

Q. Was he in uniform at the time he made the suggestions and requests, of these defendants?

A. Yes, sir.

Mr. Elrod: I have no further questions.

Thank you, Lieutenant.

The Court: Would you approach the bench, please? Both Counsel.

You want to adjourn, now?

Mrs. Williams: Yes, sir.

Mr. Elrod: That is all right.

The Court: All right, we will convene at one-thirty.

Mrs. Williams: Yes.

The Court: Ladies and gentlemen of the Jury:

In order not to interrupt the next phase of the trial, we are going to recess for lunch, now, [123] and instead of coming back at two, come back at one-thirty.

The bailiff will escort you to the restaurant for lunch.

Again, do not discuss this matter with anyone, or among yourselves.

(Whereupon, the following proceeding were had outside of the hearing of the Jury.)

The Court: I want to advise the witness that it would be improper for him to discuss his testimony, or talk with any attorneys or his fellow officers.

Mr. Elrod: You mean I cannot talk to him even, about this case?

The Court: No, sir.

Mrs. Williams: Not now.

Mr. Elrod: If Your Honor please, can we enter into a stipulation as to parade permits?

The Court: It is already in the record.

Mrs. Williams: I stipulated that there was no parade permit applied for or granted.

Mr. Elrod: Well, okay, I will stipulate to it.

* * *

[126] *Cross Examination by Mrs. Williams.*

Q. Lieutenant, I believe you said that you had been a police officer for approximately ten years, is that correct?

A. In the City of Chicago, yes, ma'am.

Q. And how long did you say that you had been detailed to the Task Force?

A. I was detailed to the Task Force on the 5th day of July, 1965, and I remained there until the 12th of October, 1965.

Q. Now, then, you did not have special training, but there were men under you who had special training, is that correct?

Mr. Elrod: Objection. It was not brought out on direct examination.

The Court: You may answer.

[127] Mrs. Williams: I will re-phrase the question.

Q. Did you testify, in answer to Mr. Elrod's question, that there were men under your command, on the second of August, 1965, who had special training for Task Force duty?

The Witness: A. Yes, ma'am.

Q. And did that special training consist of crowd control?

A. I don't know whether or not the men in the Task Force received special training.

Q. I can't hear you very well.

A. I don't know whether or not the men in the Task Force received special training in crowd control.

When I answered that they received special training, I was referring to special units within the task force, such as the Canine Unit. They received special training in the handling of dogs, or the Evidence Technician Section, where they received training in the preservation and gathering of evidence.

However, whether the men in the Task Force received special training about that of other police officers in the department on crowd control, I do not have that knowledge.

[128] Q. Well, what were you referring to when you said that the Task Force—or did you state that the Task Force is a unit assigned throughout the district to provide more protection or police work than the district could normally handle, and also one of their functions is the handling of crowds?

A. Yes, I said that. One of their functions is handling crowds, and they provide additional police service in areas where they are needed.

Q. All right. Now, do I understand you to say that there is no special training for handling crowds?

A. No, ma'am. I said I did not know whether they received any special training. They may have.

Q. Now, then, at approximately seven forty-five or eight, p.m., on the 8th—on the 2nd of August, 1965,

when you arrived, protecting the demonstrators at or about the area of 35th and Lowe, how many people would you say were in the vicinity?

A. The marchers or spectators or other—

Q. Other than marchers and spectators—

Mr. Elrod: Objection, unless it can be defined what vicinity we are talking about.

Mrs. Williams: I said 35th and Lowe.

[129] Mr. Elrod: I understand that, but it could be a mile area at that block where they subsequently marched. The term is so broad for useage—

The Court: Well, qualify the area.

Mrs. Williams: Q. At or about the hour of seven forty-five or eight, p.m., at the corner of 35th and Lowe, approximately how many spectators would you say were on that corner at 35th and Lowe?

The Witness: A. About twenty-five.

Q. At that time, at the hour of seven forty-five, p.m., were there any signs in evidence among the spectators?

A. Yes, ma'am.

Q. Do you remember what those signs were?

A. Yes, they said, "We love our Mayor."

Q. Are those the only signs that you saw at that time?

A. Those are the only signs that I remember seeing, that the spectators were carrying.

Q. Yes?

A. I saw other signs.

Q. Well, to refresh your recollection—

Mr. Elrod: I object to refreshing his recollection, unless it was brought out on direct examination.

[130] The Court: Will you ask your question, without qualifying it with—

Mrs. Williams: All right, sir.

Q. Have you exhausted your recollection?

The Witness: A. Relative to signs, yes, ma'am.

Q. Yes?

A. Yes.

Q. Sir?

A. Yes, ma'am.

Q. Now, to refresh your recollection—

The Court: Counsel, I did not sustain your objection, on the basis that he had not exhausted his recollection. You may ask him directly whether or not—

Mrs. Williams: All right.

Q. Do you recall whether or not, on the northeast corner of 35th and Lowe, right at the stop signal, directly across from the police station, there was a spectator there with a sign saying, "Nigger, go home."?

The Witness: A. I do not remember seeing that sign. I might say that I did not see that sign.

Q. All right, sir. So that the only signs that you saw, upon entering the intersection at 35th and [131] Lowe were, "We Love Our Mayor," is that correct?

The Witness: A. No, ma'am.

Mr. Elrod: I object, it has been asked and answered.

The Court: He may answer. This is cross examination.

Mrs. Williams: Q. The only sign that you had seen—

The Witness: A. No, ma'am, it was not the only sign.

Q. Among the spectators it was not—

A. Oh, yes, ma'am.

Q. Now, then, you say that—you said that the marchers were singing when they approached 35th and Lowe, is that correct?

A. Yes, ma'am.

Q. Do you know, Lieutenant, whether there was an agreement between the marchers and the police department, relative to the time during which they could sign and the time at which they must stop singing?

Mr. Elrod: Objection. It was not covered in direct examination.

The Court: Sustained.

[132] Mrs. Williams: Q. You say that the marchers ceased to sing at eight-twenty, is that correct?

The Witness: A. Yes, ma'am, about eight-twenty.

Q. Do you know why they ceased to sing at eight-twenty?

Mr. Elrod: Objection.

The Court: Sustained.

Mrs. Williams: Q. You said that you remembered the singing that the marchers were doing, and you say you heard the spectators singing some derogatory songs. Would you tell the Jury and His Honor what derogatory songs they were singing?

Mr. Elrod: Objection. It is irrelevant and immaterial, as to the exact words.

The Court: You may answer.

The Witness: A. I don't recall the spectators singing any derogatory songs.

The Court: The spectators on my right are not to communicate or correspond with anyone, and I want no further noise from anyone, or I will clear the Courtroom.

Mrs. Williams: Q. You said on direct examination that the spectators made derogatory remarks. Do you remember what derogatory remarks were made by the [133] spectators?

The Witness: A. Yes, ma'am.

Q. Would you tell His Honor and this Jury what derogatory remarks were made?

A. The songs or chants were, "Two, four, six, eight, I don't want to integrate." I recall spectators shouting, "Go home, niggers."

Q. Are those the only remarks that you heard?

A. Those are the only remarks that I remember overhearing.

Q. Then you say that at approximately eight-twenty, the marchers stopped singing, and the spectators continued to make their derogatory remarks?

A. Yes, ma'am.

Q. Now, calling your attention to the time that the marchers had stopped singing, and were proceeding south on Lowe Street, approaching the intersection of 36th Street, do you recall, as they walked south on Lowe Street, that a line of spectators had formed across the sidewalk, north and south on 36th Street? Do you recall?

A. I am sorry. I don't—

Q. The marchers were proceeding south on Lowe.

A. Yes, ma'am.

[134] Q. And they were approaching the intersection of 36th Street?

A. Yes, ma'am.

Q. Do you recall that as the marchers continued down Lowe Street, toward 37th Street, that a line of marchers —a line of spectators had formed in a northerly and southerly direction across the sidewalk, on 36th Street between Lowe and Union, housewives, not youngsters, housewives and adults? Do you recall that?

A. There were a group of spectators at the intersection of 36th and Lowe, as the marchers proceeded south across 36th Street.

Q. There was a group there, too, but I am speaking of the group—

A. At which corner?

Q. At 36th and Lowe, between 36th and Lowe and 36th and Union, before you get to the alley, on the sidewalk, in a northerly in southerly direction across the sidewalk that the marchers had been walking on. Do you recall that?

A. I recall the spectators would fall in at the head of the line of the march.

Q. Do you recall that there were spectators [135] at a standstill, grown men and grown Caucasian women, standing in a group across the sidewalk—

Mr. Elrod: Objection. If Counsel wants to testify, perhaps she could be a witness. However, this witness has testified to what he saw and to what he did not see.

The Court: It is leading, and she also has a right, on cross, to go into other circumstances that may have been omitted in the direct examination.

Mr. Elrod: I agree with that—

The Court: I will allow him to answer.

Mrs. Williams: Q. Do you recall, Lieutenant, this group—do you recall that there was a group across the sidewalk, the sidewalk that runs east and west on 36th Street, on the north side of 36th Street—

Mr. Elrod: I am objecting. She says, "Do you recall the group?" The question is, was there a group, and it is misleading.

Mrs. Williams: I will change the phraseology.

Q. Do you recall if there was a group of spectators in a northerly and southerly direction, across the sidewalk running east and west between Lowe and Union on 36th Street?

[136] The Witness: A. Yes, ma'am.

Q. All right. So that when you testified, Lieutenant, that the group continued to walk down Lowe Street towards 37th Street, that group had no other alternative, did they—

Mr. Elrod: Objection.

The Court: Sustained.

Mr. Elrod: And I ask the Jury to be instructed to disregard Counsel's remark.

The Court: The Jury is instructed to disregard the inferences given rise to, by the question.

Mrs. Williams: Q. Lieutenant, did you see any police officers attempt to disburse the group that stood across the east and west sidewalk, on 36th Street and between Lowe and Union?

The Witness: A. All of the spectators—

Q. No, sir. Did you see—

Mr. Elrod: Objection, Your Honor.

The Court: Sustained.

Mr. Elrod: Is there a pending question, Your Honor?

The Court: I have sustained the objection to it.

Mrs. Williams: Q. Did you see any police [137] officers who attempted—

You sustained the objection to that?

The Court: Go ahead.

Mrs. Williams: Q. Did you see any police officers attempt to disburse the group congregating on the east and west sidewalk at 36th Street, between Lowe Avenue and the alley west of Lowe—

Mr. Elrod: Objection.

The Court: Sustained.

Mrs. Williams: Q. When the marchers proceeded down Lowe towards the funeral home, were they singing?

The Witness: A. No, ma'am,

Q. I believe you testified, at that time the spectators were becoming more intense, is that correct?

A. They were growing in number.

Q. As we proceeded—as they proceeded toward the corner of 37th and Lowe, is that correct?

A. Yes, ma'am.

Q. Was there noise in the area?

A. Yes, ma'am.

Q. By whom was the noise made?

A. The spectators.

[138] Q. At that time—

May I see a copy of the complaint? One of each, Judge.

At that time, were any of the spectators who were making noise, to your knowledge, arrested for—arrested for making or aiding in making—

Mr. Elrod: I am objecting.

Mrs. Williams: (Continuing) —making an improper noise, a riot, a disturbance, or a diversion tending to a breach of the peace, within the limits of the City of—

Mr. Elrod: Objection.

The Court: Objection sustained.

Mrs. Williams: Q. At that time, to your knowledge, were any of the spectators arrested—

Mr. Elrod: I'm objecting.

The Court: Sustained.

Mrs. Williams: I haven't asked it.

The Court: Have you completed the sentence?

Mr. Elrod: I thought she stopped at "arrested".

Mrs. Williams: Judge, for the purpose of the record, may I—

The Court: Complete your sentence, for the record.

[139] Mrs. Williams: Q. Were any spectators ar-

rested for collecting in a crowd or in a body for unlawful purposes or for the purpose to the annoyance or disturbance of other persons?

Mr. Elrod: Objection.

The Court: Sustained.

Mr. Elrod: I ask that the Jury be instructed to disregard the inferences or remarks of Counsel in asking—

The Court: They are so instructed.

Mr. Elrod: Thank you.

The Court: The Jury is instructed to ignore any inferences by the questions that may be asked.

Mrs. Williams: Q. On direct examination, I believe you said, as they proceeded—as the marchers proceeded on Lowe Street, towards 37th Street, there were eggs and rocks thrown. Is that correct?

The Witness: A. Yes, ma'am.

Q. Do you recall, Lieutenant, that a—whether or not a complaint was made, directly to you, regarding a rock being thrown and striking one of the demonstrators, and one of the demonstrators being spat upon, specifically the demonstrator, Jean Williams?

[140] Mr. Elrod: I object.

The Court: Sustained.

Mrs. Williams: Q. Do you recall, Lieutenant, whether or not any complaints were made to you by any demonstrators, regarding a rock being thrown?

Mr. Elrod: Objection.

The Court: Objection sustained.

Mrs. Williams: Well, Judge, I would like to be heard on this.

This was brought out on direct examination, that rocks were thrown.

The Court: We will go on record, in chambers.

(Whereupon, the following proceedings were had in chambers, out of the presence of the Jury.)

Mrs. Williams: Judge, this was brought out on direct, that rocks were thrown, and eggs were thrown, by the spectators, and that he did not make any arrest. He was allowed to narrate why he did not, and I did not object. I allowed him to go right ahead and talk and talk and talk, about he did not doing anything because there were too many people there. I know, as a matter of fact, that [141] I am the one who walked up to him and complained about being spat upon.

Mr. Elrod: And you talked to me.

Mrs. Williams: And I talked to you, too, in your presence.

The Court: Merely because you made no objection to evidence that was otherwise inaudible, that doesn't permit you to put it in on the basis of cross examination. The fact that a police officer may or may not have arrested anyone other than the Defendants on trial has no probative value so far as this case is concerned.

Mrs. Williams: Yes it does, because when I make my motion for a directed verdict, it will be on the grounds of equal application of the law, refusal to apply the law equally.

The Court: Well, you are getting your record for your appeal on it, but—

Mrs. Williams: This must be shown, Judge, that there was a lack of equal protection under the law.

The Court: If you are going to show it, you will have to show it by means of an offer of proof, outside the presence of the Jury, because I don't want it to be an error.

[142] Mrs. Williams: I offered to show, by cross examination, that when this witness was in the vicinity

of 35th and Lowe and 36th and Lowe and 37th and Lowe, on the 2nd day of August, 1965, that at that time, the witness was advised that there were spectators in the area who had directly attacked demonstrators in the company of these five Defendants by spitting, throwing eggs, and throwing rocks, and striking the demonstrators; that there was a complaint made to this witness at that time, asking for the protection of the Chicago Police Department, and that this witness did not arrest any spectators, although identified by a demonstrator, for disorderly conduct or for any other offense.

Mr. Elrod: If Your Honor please, I don't know if it is proper by way of offer of proof to have a counter offer of proof, but if this witness were allowed to testify on cross examination—

The Court: You can either accept her offer of proof, as stated in narrative form, or she can proceed to interrogate this witness outside the presence of the Jury as to facts she purports to be developed if she were to examine him.

[143] Mr. Elrod: May I redirect examine by way of the offer of proof?

The Court: This is a little unique that your offer of proof is being made on cross examination.

Mr. Elrod: I was objecting to that, to begin with.

Mrs. Williams: And if the Court—

I will go off the record and say this—

(Off the record discussion.)

Mr. Elrod: I am objecting to an offer of proof to be elicited on cross examination, that is A.

B, I am objecting to the narrative form of the offer of proof, and;

C, if it be by narrative form, or by question and answer form out of the presence of the Jury, then the City, the

Plaintiff herein, would like to either offer in narrative form what would be testified to on redirect, or ask actual question and answer form on redirect.

Mrs. Williams: May I state this:

An offer of proof may be made in writing, it may be made in narrative form, or it may be made in question and answer form, according to trial procedure. Also, what is elicited on cross examination need not [144] be only evidence that is helpful to the prosecution, but the purpose of cross examination is to clarify and elicit information from the witnesses for the prosecution, that has not been already brought out.

The Court: When you go beyond the scope of direct examination, you are subject to objection—

Mrs. Williams: But this was brought out on direct examination.

Mr. Elrod: Nothing about complaints was brought out on direct examination.

The Court: There is no evidence, as I recall it, that anyone asked that a spectator be arrested. There were facts brought out that spectators threw rocks. I don't remember eggs, but on cross examination it was rocks and eggs, and they used foul language, and et cetera.

Mrs. Williams: Does Your Honor hold that on cross examination, you can't ask if arrests were made when these things were done?

The Court: Yes, I am definitely ruling that this would be beyond the scope of direct. I would sustain the objection to that, because it is of no probative value, inasfar as this case is concerned.

The fact that others may or may not have been [145] arrested has nothing to do with the propriety of these five defendants.

Mrs. Williams: It goes very much to the heart or the crux of the whole thing.

The Court: I want you to make your record on the constitutional question, but I think it is my ruling that it is not proper testimony in this case.

Mr. Elrod: Did Mrs. Williams' statement, by way of an offer of proof stand as such, and if so, I want to have a counter offer of proof.

The Court: Well, you are in a better—you are the only one in a position to know whether exhaustive examination of this witness, outside the presence of this Jury would elicit the facts that she has stated here. If you feel these facts could be elicited, we will save time—

Off the record.

(Off the record discussion.)

The Court: I am sustaining your objection to the offer of proof at this time, and at a later date, you are on record of what your offer of proof will be, and if necessary, we can consider it.

I want your record to be protected.

Mrs. Williams: Off the record.

[146] (Off the record discussion.)

(Whereupon, the following proceedings were had in open court, in the presence of the Jury.)

Mrs. Williams: Q. Lieutenant, as the marchers were walking down Lowe Street, beyond 36th and towards 37th, I believe you stated that they were not singing at that time, is that correct?

The Witness: A. Yes, ma'am, they were not singing.

Q. Were they making any noises or chants of any sort?

A. No, ma'am, they were not.

Q. Now, do you remember approximately what time it was that the marchers proceeded down Lowe Street to 37th?

A. It was shortly before nine, p.m.

Q. So that from eight-twenty until nine, p.m., there had been no noise on the part of the marchers, is that correct?

A. Yes, ma'am.

Q. Do you remember whether or not any of the spectators, at this point, were making noises or singing—

Mr. Elrod: I am objecting. This has been asked [147] and answered.

The Court: Overruled.

Mrs. Williams: Q. (Continuing) —at 37th and Lowe?

The Witness: A. Yes, ma'am, there was noise being made by the spectators.

Q. Now, I believe you said that at this point, you directed police officers to the area where the spectators were beginning to become angry. Is that correct, sir?

A. No, ma'am.

Q. Approximately how many spectators were at 37th and Lowe where the funeral or wake was in progress?

A. When the marchers arrived at 37th Street, I would say there were about two hundred spectators at 37th and Lowe.

Q. I believe you said that the neighbors were in the street, is that correct, sir?

Mr. Elrod: No, objection. There was no such statement made about neighbors being in the street.

The Court: Your objection as to the use of the word "street," distinguished from "sidewalk" and—

Mr. Elrod: Yes.

The Court: Sustained.

[148] Mrs. Williams: Q. On cross examination, did you, at anytime describe the neighbors as being in the street—on direct examination. I am sorry, sir.

On direct examination, did you, at anytime, describe the neighbors as being in the street, in answer to Mr. Elrod's question?

The Witness: A. Yes, I did.

Q. Now, when you said they were in the street, were they, as a matter of fact, in the street, the area used by cars to travel up and down?

A. Some of the spectators were.

Q. Where were the demonstrators?

A. For most of the evening, the demonstrators were on the sidewalk.

Q. For most of the evening?

A. Yes, ma'am.

Q. Do I understand by that, that at some point the demonstrators were in the street?

A. Yes, ma'am.

Q. You recall at what point it was that the demonstrators were in the street?

A. At 35th and Lowe as they were going—

Q. (Interposing) —around the corner?

A. Yes, ma'am.

[149] Q. At 35th and Lowe?

A. Yes.

Q. Would that have been 3502 Lowe, where the lawn sprinkler was coming across the sidewalk—

A. I didn't notice—

Mr. Elrod: Objection. There is no testimony that there was a lawn sprinkler coming across the sidewalk.

The Court: Sustained, as to its form.

Mrs. Williams: Q. Well, was there any reason, as far as you know, why the demonstrators were in the street?

Mr. Elrod: Objection as to reasons why persons were on streets or were not on the street. I don't know if the Lieutenant knew of any reason why they were ever there.

The Court: You may answer.

Mrs. Williams: Q. Was there any reason, sir, as far as you know, why the demonstrators went out—well, withdraw that.

As a matter of fact, were not the demonstrators in the street from 3502 to approximately 3514 Lowe?

The Witness: A. The demonstrators were in the street for about two hundred feet; one hundred and [150] fifty to two hundred feet.

Q. Was there any reason why the demonstrators were in the street for approximately—

Mr. Elrod: Objection.

Mrs. Williams: Q. (Continuing) —two hundred feet, as far as you know?

Mr. Elrod: Objection as to the reason why anybody does anything.

The Court: Sustained.

Mrs. Williams: Q. At the time the demonstrators were in the street for two hundred feet, was there water being thrown across the sidewalk for that two hundred feet area?

Mr. Elrod: Objection.

The Court: Let him answer.

He may answer.

The Witness: A. There was water being thrown across the sidewalk.

Mrs. Williams: For a two hundred foot area, is that correct?

The Witness: A. One hundred fifty to two hundred feet.

Q. Now, in handling crowds—strike that.

In the exercise of the Task Force function of [151] handling crowds, was there any direction given by you to handle or control the spectators, prior to the arrest of the marchers?

Mr. Elrod: Objection.

The Court: Sustained.

Mrs. Williams: Q. You say that a larger group of spectators gathered at 37th and Lowe Street, is that correct, sir?

Mr. Elrod: I am objecting to the form of the question.

The Court: I am going to sustain it, because you ignored the question of time and several other things.

Mrs. Williams: All right.

Q. How many times did the marchers go to 37th and Lowe Street, on the night of August 2nd, 1965?

The Witness: A. Once.

Q. Now, when the marchers went to 37th and Lowe Street, for that one time, you said that there were a larger group of spectators that had gathered at 37th Street. What did you mean by a larger group? Larger than what?

Mr. Elrod: I am objecting.

The Court: He may answer.

Mr. Elrod: I don't recall—I think the question [152] is incompetent to answer. It, in part, is what he is presumed to have said. She asks, "larger than what," and I don't recall that he—

Mrs. Williams: I will withdraw it.

Q. Did you say, "A larger group of spectators gathered at 37th Street and Lowe on the night of August 2nd, 1965?" Did you say that; when the marchers were in that area?

The Witness: A. I said that as the marchers approached that intersection, the size of the crowd grew.

Q. All right—

A. The size of the crowd of spectators grew.

Q. All right. Now, it grew from what number to what number, approximately?

A. From fifteen or twenty spectators to about two hundred spectators.

Q. It grew from fifteen or twenty to two hundred?

The Court: Pardon me.

From fifteen or twenty people to about two hundred spectators?

The Witness: A. Yes.

Mrs. Williams: Q. And was this group of spectators the group that became vocal and to which you assigned [153] thirty police officers?

The Witness: A. The police officers—

Mr. Elrod: Judge, there has been no testimony that Lieutenant Hougeson assigned police officers to a group of spectators.

The Court: Well, the Jury will have to depend on their own recollection in the testimony.

As I recall, there was one instance where he used a walkie-talkie to—

Mr. Elrod: (Interposing) —assign them to the marchers to protect the marchers.

I believe that is what the testimony indicated.

Mrs. Williams: Q. Lieutenant, at 37th and Lowe Street, when the crowd of spectators grew from fifteen or twenty to two hundred spectators, and you assigned

thirty police officers to protect the marchers, were the marchers singing at that time?

The Witness: A. No, ma'am.

Q. Were the marchers making noise at that time?

A. No loud noises.

Q. Were the marchers throwing eggs at that time?

Mr. Elrod: Objection.

The Witness: A. No.

The Court: He may answer.

[154] The Witness: A. No, ma'am.

Mrs. Williams: Q. Were the marchers throwing rocks at that time?

Mr. Elrod: Objection.

The Court: He may answer.

Mr. Elrod: I am objecting to the use of the words, "at that time". It infers that they were at some other time.

The Court: The Jury heard the testimony, I am sure.

Mrs. Williams: Q. Were the marchers throwing rocks at 37th and Lowe?

The Witness: A. No.

Q. But the spectators were, is that correct, sir?

A. Yes, ma'am.

Q. Now, you say that 37th and Lowe is primarily residential area?

A. Yes, ma'am.

Q. On the corner of 37th and Lowe, on the northwest corner, do you recall what is on that corner?

A. The northwest corner is where the funeral home is.

Q. That is where the funeral home is?

A. Yes.

Q. Do you recall what, if anything, is next to the [155] funeral home, sir?

A. No, ma'am.

Q. As a matter of fact, is it not a store front—

Mr. Elrod: I am objecting. The witness stated that he does not recall.

Now, if Counsel is going to testify, you may take the stand and testify.

Mrs. Williams: I would like to, but I can't.

Mr. Elrod: If he doesn't recall what is there, I don't know how he can testify as to what is a fact or what is not a fact.

Mrs. Williams: Have you exhausted your recollection as to what else is in the vicinity—the area of 35th and Lowe, other than the funeral home?

The Court: He testified that there was a funeral home on the northwest corner, and he has no recollection of what is next to it.

Mr. Elrod: That is right. She asked the question, had he exhausted his recollection—

The Court: Well, he will either remember or he won't remember.

Mrs. Williams: Q. To refresh your recollection, there are a row of stores, side by side, from the northwest corner of Lowe on 37th Street back to, and [156] extending continuously west to Union, is that correct, or do you remember?

Mr. Elrod: I am objecting.

The Court: He may answer.

The Witness: A. I have no recollection of it.

Mrs. Williams: Q. Are you regularly assigned in that area, to the police station at 3501 Lowe?

The Witness: No, no, I am not.

Q. Now, do you recall that there is a Catholic school and a Rectory on the southwest side of 37th Street, extending from Lowe back to and including Union?

A. I believe there is.

Q. All right. Sir, so that when you said it was primarily a residential neighborhood—I withdraw that.

Would you describe what you mean by a primarily residential neighborhood at 37th and Lowe?

A. That Lowe Avenue—

Q. 37th and Lowe, sir, from 36th Street up to—

Mr. Elrod: Objection.

The Court: Sustained.

Mrs. Williams: Objection to what question?

Mr. Elrod: Objection to the question, yes.

The Court: "Residential area" can't be limited to the corner of 37th and Lowe. I sustain the objection.

[157] Mrs. Williams: Q. Then, would you describe what portion of the area from Lowe, at 37th, back to Union at 37th, you consider to be residential?

The Witness: A. I have no recollection of 37th Street from Lowe to Union.

Q. But you do recall there is a school on the south side of 37th Street, taking up the entire area from Union back to Lowe?

Mr. Elrod: If Your Honor please, I am objecting. This man is not a city planner.

Mrs. Williams: He just said he remembered it. I just wondered if he still remembered it. That is all.

The Court: We don't need any—

Mr. Elrod: Churches and schools are permissible in a residential district.

The Court: The general area has been testified to as being a residential area. You may cross examine as—

Mrs. Williams: Do you remember what is on the—on the northwest corner of 37th and Union?

The Witness: No, ma'am.

Q. Do you know whether or not—do you recall whether or not there is a vacant lot?

[158] A. No, ma'am.

Q. Now, as the marchers proceeded down Union in a northerly direction from 37th Street, were there any spectators present at that time?

A. Yes, ma'am.

Q. Sir?

A. Yes, there were.

Q. All right; approximately how many spectators were there as they were at 37th and Union proceeding, now, in a northerly direction?

A. Well, while the marchers were at that specific intersection, there were approximately two hundred spectators at that same area, when the marchers were there.

Q. Were these the same two hundred spectators who were also present at 37th and Lowe?

A. I would say most of them were, yes, ma'am. They were moving with the marchers.

Q. As a matter of fact, the spectators were in the street, were they not?

A. Some of the spectators were in the street.

Q. And the marchers were on the sidewalk, is that correct?

A. Yes, ma'am.

[159] Q. And the marchers remained on the sidewalk, or did the marchers remain on the sidewalk, as they proceeded in a northerly direction back toward 35th Street?

A. Yes, ma'am.

Q. And did some of the spectators remain in the streets?

A. There was continuous changing of individuals who were in the street, among the spectators, but they were instructed by myself and by other police officers to return to the sidewalk. They would, and others from the spectators would then go back out into the street. It wasn't the same individuals in the street continuously.

Q. All right. Now, then, I believe you stated that the anger of the spectators increased as the marchers were going back down Union Street, is that correct?

A. Yes, ma'am.

Q. How did you determine that the anger of the spectators increased?

A. By their actions and activity.

Q. All right, would you tell this Jury and His Honor what action and activity you are referring to?

[160] A. They were shouting and making a great deal of noise in their shouts. They were quarrelsome, argumentative and they were throwing rocks and—

Q. I still can't hear you, sir.

A. They were quarrelsome with the demonstrators. They were shouting, throwing rocks, generating more noise, and—

Q. And did I understand you to say throwing more rocks?

A. Throwing rocks.

Q. All right. Sir, now, at the time they became—that the spectators became quarrelsome, Lieutenant, did you have occasion to speak with one of the spectators?

A. No, ma'am.

Q. At anytime, did you personally order any of the quarrelsome, shouting spectators to cease their shouting or yelling?

A. Yes, I did.

Q. Did you direct this to a spectator?

A. To the spectators. Not to an individual.

Q. This direction that you gave, was it directed to spectators who were shouting?

A. From a group of spectators wherein these noises [161] came from.

Mr. Elrod: Will the Court ask the witness to speak up?

The Court: Yes. Try to speak a little louder.

Mr. Elrod: Are those microphones working?

Mrs. Williams: Q. While you were admonishing the quarrelsome, boisterous spectators, what, if anything, were the marchers doing?

The Witness: A. Marching, walking along.

Q. Singing? Were they singing?

A. No, ma'am.

Q. Were they quarreling?

A. No.

Q. Were they quarrelsome?

A. No, no.

Q. Were they boisterous?

A. No, ma'am.

Q. Were they shouting?

A. No.

Q. Were they making any noise at all?

A. Just the normal noise a group of sixty-five to eighty-five people would make walking down the street, engaging each other in quiet conversation.

Q. Was their crowd quiet conversation audible to [162] you over and above the shouting, quarreling noise generated by the spectators?

Mr. Elrod: I object.

The Court: He may answer.

The Witness: Not to the point where I could determine what they were saying.

Mrs. Williams: Q. Now then, when the marchers approached Lowe, at 35th Street, heading east, is that the point where you say there were approximately one thousand to one thousand two hundred people in the area?

Mr. Elrod: Objection. I don't recall any testimony that the marchers approached Lowe and proceeded east on 35th Street, and other than that—

Mrs. Williams: I am sorry.

Q. As they approached Union, and proceeded east—

Mr. Elrod: I withdraw my objection to the second question.

The Court: Yes.

The Witness: A. No, ma'am.

Q. Then at what point did the one thousand to one thousand, two hundred people in the area collect, on the 2nd day of August, 1965?

Q. At that time, when the marchers were stopped, [163] Commander Pierson made a request to them that they leave the area.

Q. All right. Was that at 35th and Union?

A. It was between Union and Lowe on 35th Street.

Q. All right. Now, if you recall, where were the one thousand to one thousand, two hundred spectators which had now congregated into the area?

A. On the north side of 35th Street at the corner of the intersection at 35th and Union, and at 35th and Lowe. A few on the south side of 35th Street, east of the alley that runs between Union and Lowe.

Q. Were any of those spectators in the streets used by the cars running east and west on 35th Street, any of these one thousand to one thousand, two hundred spectators?

A. Yes, ma'am.

Q. Were the policemen in the area under your command?

A. They were under the command of Commander Pierson.

Q. Were there policemen in the area under the command of Commander Pierson?

A. Yes, ma'am.

Q. Were any of these policemen in the area assigned to protect or control the mob, the crowd, the spectators? [164] A. To my knowledge, there were no policemen assigned to protect the spectators.

Q. Were any of the policemen assigned to control the one thousand to one thousand, two hundred spectators?

A. Yes, ma'am.

Q And do you recall the spectators being in the street, or do you recall whether or not the spectators were in the street at the time you saw the TV cameramen flood the intersection with lights?

Mr. Elrod: Objection as to—

The Court: Sustained.

Mrs. Williams: Q. Well, did you testify that a TV cameraman flooded the intersection with lights, in answer to Mr. Elrod's question?

The Witness: A. Yes, I testified that at one point an intersection was flooded with lights by TV cameramen.

Q. At what intersection was it that the TV cameramen flooded the intersection with lights?

A. At 36th and Union, the one at the time I was referring to, in response to a question asked by Mr. Elrod.

Q. Now, I believe you testified that the band— [165] there was a band playing, is that correct?

Mr. Elrod: Objection.

The Court: Sustained.

Mrs. Williams: Q. Did you testify, on direct examination, that there was a band playing on the 2nd of August, 1965?

The Witness: A. No, ma'am.

Q. Well, did you testify, on direct examination, in answer to Mr. Elrod's question, that there were a group of youngsters playing instruments?

A. I testified—

Mrs. Williams: If the Court please, I am going to object to Mr. Elrod's standing back here behind my back, making signals up and down with his head.

The Court: He hasn't been shaking his head.

Mrs. Williams: I remember what he said.

Mr. Elrod: Then, remember that he didn't say "band".

Mrs. Williams: Q. Do you remember what you answered to Mr. Elrod's question, with reference to noise?

The Witness: A. Yes, I do.

Q. Tell us—

A. I said, there were two youngsters. One youngster [166] was there with a set of cymbals, and the other was there with a trumpet, playing some patriotic song, at that intersection.

Q. Lieutenant, do you consider "Dixie" to be patriotic?

Mr. Elrod: Objection.

The Court: Sustained.

Mr. Elrod: He didn't state "Dixie" was being—

The Court: It assumes a fact, not in evidence.

Mrs. Williams: Q. Lieutenant, were these youngsters, or these two youngsters—I withdraw that.

What do you mean when you say "youngsters," what age limit?

The Witness: A. Well, in this instance, about fifteen or sixteen years old, I would say.

Q. Do you know where they were, specifically?

A. They were at the southeast corner of 36th and Union.

Q. And you saw one with a cymbal and one with a trumpet, is that correct?

A. Yes, ma'am.

Q. Did you see one with a big bass drum, seated on a stool?

A. No, ma'am.

[170] The Court: By the testimony of what he did not see—

Mrs. Williams: No, sir. "Did you see a saxophone, did you see a drum," did you see this and did you see that?

Judge, that is normally a very competent question. I am sure—

The Court: Within limits.

Mrs. Williams: Take away from this factor, which I don't think had any bearing or weight on it, whatsoever, that the lawyer asking him the question was also present and has personal knowledge of what took place—

Mr. Elrod: That is the reason—

Mrs. Williams: Certainly, if a person testified that he saw certain things when he was in a position to see more, it would be competent to ask him what he saw or did not see, where he had an opportunity to see more.

The mere fact that Jean Williams was there has nothing to do with what would be the competency of the question she is asking.

The Court: This I will grant, up to a point, but you can go on infinatum, asking him what he did [171] not see.

Mr. Holt: If it is pertinent.

The Court: If it is pertinent, yes, but there comes a point where it is no longer pertinent. He testified that he saw two things, a cymbal and a trumpet.

Mr. Holt: Judge, isn't she entitled to show that he was in a position that he could have seen more, and what he should have seen or observed?

The Court: I can think of one hundred musical instruments, but I am not going to allow you to ask about an oboe, a bassoon, a trombone, or a tuba.

Mrs. Williams: I have ten competent witnesses to testify that this ten piece band was there—

The Court: Fine, you can put on whatever witnesses you have, but you can't go on infinatum.

It would be enough to say that the only instruments you saw were a cymbal and a trumpet. If you have other witnesses, this is something the Jury has a right to weigh.

Mr. Elrod: But in my objection, I am objecting not only as to what he did not see, but Counsel is stating it as if it were a fact, "Do you consider 'Dixie' a patriotic song?"

[172] Mr. Holt: That objection was made and sustained.

Mr. Elrod: I am saying that is compounding—

Mrs. Williams: I should have asked him, "What is a patriotic song?"

The Court: Then we get into something that is not material either.

You can solve your question about musical instruments with one question, and nothing else.

Mr. Elrod: Regarding this particular objection, you will only allow the question—

The Court: I have sustained the objection in its form, and she can go back and ask him whether he saw any instruments in addition to a trumpet and cymbal.

Mrs. Williams: Yes, because he placed the TV camera there, at that time. I want to ask him if that is all he saw.

The Court: Off the record.

(Whereupon, there was an off the record discussion.)

Mr. Elrod: I would like to offer another objection, for the record.

I object to the fact that on the Counsel table, and facing toward the Jury is a scrapbook, it looks like, which in bold black headlines are, I [173] believe, and I am just giving the gist of it, "Cops stop march on Daly."

Mr. Field: Check.

Mr. Elrod: Or, "Check marchers on Daly's home." On the other side—I believe this is large enough, in bold enough print, for the Jury to see from the position it is in, and on the other side is, "Segregation," or some such quote, quoting Raby, and I am objecting to it. I am sure Counsel did not mean this to be done deliberately, for the Jury to see this, but I am objecting to the document being opened in such position, facing towards the Jury, in other words, so they can read it right side up, and open on the Counsel table.

The Court: Well, I—

Mrs. Williams: Yes, and may I ask this? Where would the Corporation Counsel suggest I keep my potential exhibits? I have not heretofore made any objection to exhibits of the Corporation Counsel, and each of them, for passing among them photographs of obvious marchers, with signs in their hands, which Mr. Elrod

approached the bench with, at one time, because I assumed that these were potential exhibits.

The Court: Well, I will direct Counsel, both for the City and the Defense, to keep their exhibits [174] out of the sight of the Jury until such time as the Exhibits are offered, if they intend to submit them to the Jury, and we will rule on their propriety at that time.

Mrs. Williams: I would also like to state that I found a place, when I was ready to question a witness on this particular thing, I found the place and handed it to a witness and admonished him to place his finger in the particular part I wanted to present to the witness, before I presented it.

Mr. Elrod: I take it, when you say, "sight," you mean so that the Jury cannot read it. When you are talking about a picture approximately four by six, and you are talking about headlines on a piece of paper that is approximately one foot by eight inches or two foot by eight inches, and you are talking about print that is approximately two inches, I think that sight has a relevance, what you mean by the word sight.

There is a possibility that they could read the words appearing in the printed matter, and from that, gain some inference that they shouldn't properly have at this time, which would not be true of the picture. Were they able to see it sufficiently to be [175] able to determine what the characters were doing, yes, but let's keep them out of sight, and we won't have any trouble.

Mr. Holt: I would like to make a motion.

I don't know whether my co-counsel made it before, but for the purpose of the record, at any rate, I would like to move the Court for a mistrial, and the reason is pretty much the same, I think, that I said to Your Honor

while we were in the process of a voir dire examination of this Jury.

This Jury, Your Honor, is composed of twelve white persons, and it must necessarily have been, from the manner in which we selected this Jury, except for one or two alternates which are Negro. I have heretofore objected to the composition of the veniremen on the basis that it systematically, or tended to systematically exclude from the Jury Negroes. In connection with that, it is borne out that I was correct by the fact that this Jury, the twelve men and women that will ultimately decide this case, say except for an accident, are all white persons. I think this gives more weight to the fact—to the basis of our original motion that we did not have a fair opportunity to get a representative proportion [176] of the citizenry on this Jury. This Jury, having been sworn, and having received evidence, I respectfully urge the Court that it was an error not to have more Negroes on the Venire, and I request the Court to grant a mistrial and that we reselect this Jury and that you give us an opportunity to have more representative members of Negroes.

Mr. Elrod: I take it that Counsel is going to come forth with its burden of proof in showing that there was systematic selection according to Swinn versus Alabama.

The Court: We have already ruled on this matter. The ruling now will be the same. For the purpose of the record, since you want to renew your motion after the trial has commenced and the Jury sworn, we will consider the authorities in argument advanced at previous discussion in chambers, to be repeated at this time.

Mr. Holt: That is right.

The Court: Very well.

Mr. Elrod: I don't believe Mr. Holt was here during that discussion.

Mr. Holt: No.

Mrs. Williams: No.

[177] The Court: There will be a five minutes recess.

(Short recess taken.)

(Whereupon, the following proceedings were had in open court, in the presence of the Jury.)

Mrs. Williams: Q. Lieutenant, are the only instruments that you saw on the southeast corner of Lowe and 36th Street, on the 2nd of August, 1965, a cymbal and trumpet?

The Witness: A. Yes, ma'am.

Q. Do you recall the name of the song that you heard them play?

A. One of the songs that I heard played was, "My Country 'Tis of Thee." I don't remember what else they were playing.

Q. Did you, at anytime, hear the song, "Dixie," played?

A. I don't remember hearing it.

Q. And do you remember where the TV camera was —strike that.

Was the TV camera and the floodlights on at the time, or simultaneous with the playing of the [178] cymbal and the trumpet by these two persons?

A. No, ma'am.

Q. You recall whether or not there were any news photographers in the area—newspaper photographers at that intersection, as these people whom you saw were in action?

Mr. Elrod: Objection to the form of the question, "at that time," where it says, "people you saw in action,"—

The Court: The inference is with reference to the cymbal and trumpet player.

Mr. Elrod: Oh.

Mrs. Williams: The cymbal and trumpet player.

The Witness: A. No, not if—no, I do not.

Mrs. Williams: Q. No, you do not recall.

The Witness: A. No, I do not recall.

Q. Now, when the TV cameramen flooded the area with lights, was this just prior to the arrest of the marchers?

Mr. Elrod: Objection as to the time and location.

Mrs. Williams: All right, I will rephrase it.

The Court: What is your—

Mrs. Williams: It will be connected up by another witness.

[179] The Court: Very well.

Mrs. Williams: Q. What length of time elapsed between the flooding of the area with TV camera lights and the arrest of the demonstrators?

Mr. Elrod: Objection as to the materiality.

The Witness: A. Mrs. Williams—

The Court: I don't see the materiality, here. Do you intend to hook this up with other testimony?

Mrs. Williams: It will be material when the TV cameramen who were on the scene come in and show that this was a continuous thing. It was not a break-up. These particular pictures were taken from the time this man was out there, right around to the time the arrest was made.

The Court: I will let him answer.

Mrs. Williams: Do you remember the question?

Mr. Reporter, read the question back.

(Whereupon, the desired portion was read back by the reporter.)

The Witness: A. About fifteen minutes, I would say.

Mrs. Williams: Q. Were the—

A. Excuse me. About a half an hour. I was speaking —to the time they were arrested, about [180] thirty minutes.

Q. Were you with the demonstrators continuously, Lieutenant, from the time they arrived at 35th and Lowe for the first time, until such time as they were placed under arrest?

A. No, ma'am.

Q. At what point did you depart from the marchers?

A. I went into the Ninth District Station for a few minutes, when they came around the corner at 35th and Lowe, in the early part of the evening.

Q. Do you remember about what time it was?

A. Oh, it was a few minutes after eight, I would say. Ten minutes after, five or ten minutes after eight.

Q. That would make it about 8:10, is that correct?

A. About 8:10.

Q. All right. From eight-ten to the time of the arrest, were you continuously with the marchers?

A. Yes, ma'am.

Q. And at 35th and Lowe, when Commander Pierson requested the marchers to leave the area and said that the conditions were riotous, do you know whether or not anyone other than the marchers were arrested— [181] I withdraw that.

Did you say that at 35th and Lowe, Commander Pierson stated that the situation was worse and conditions were riotous?

A. Yes, I said that Commander Pierson made that statement.

Q. All right. Do you know whether anyone at 35th and Lowe, anyone other than the marchers were arrested at 35th and Lowe for making an improper noise, riot—

Mr. Elrod: I am objecting.

The Court: She wants to read the rest of the language, and then make your objection.

Mrs. Williams: Q. (Continuing) —disturbance, diversion tending to a breach of the peace?

Mr. Elrod: Objection.

The Court: Sustained.

Mrs. Williams: Q. Were the demonstrators riotous at 35th and Lowe, at the time the statement was made by Captain Pierson?

Mr. Elrod: Objection as to the conclusion.

The Court: It has already been answered, Mrs. Williams.

Mrs. Williams: At 35th and Lowe?

[182] The Court: All right, you have got another corner.

You may answer.

Mr. Elrod: I am objecting that it evades the province of the Jury.

The Court: It—

Mrs. Williams: Captain Pierson, I think he testified—

The Court: I will sustain it.

Mr. Holt: But Judge, the fact that he was—

The Court: You are asking for—

Mr. Holt: (Interposing) —the conclusion that this witness can properly draw. He is a police officer, and he was there. He had the whole scene under observation.

The Court: Sustained.

Mr. Holt: Judge, quite frankly, this is a police officer, and while he wasn't in direct command, he was a high official in the police department. He observed what was going on, and it is a question within his knowledge—.

Mr. Elrod: Is Counsel stating that this witness—

Mr. Holt: Of necessity, it imports conclusions anytime anybody uses it. It invites a certain amount [183] of conclusionary fact in it, but I think this witness can answer that question.

Mr. Elrod: Is Counsel stating that the foundation has been laid, and this witness can give his opinion as to whether or not conditions were riotous at that time?

Mrs. Williams: The foundation was laid.

The Court: The opinion of the officer, who is authorized to command the arrest, I will allow in evidence, but the subordinates and the authorities to command the arrest—

Mrs. Williams: I can ask him, in his opinion.

The Court: No.

Mrs. Williams: In his opinion as a police officer.

The Court: No, this invades the province of the Jury.

Mrs. Williams: He said that Captain Pierson said the conditions were riotous, and now it is—

The Court: You are asking—he has given you Commander Pierson's opinion, and now you want his. Now, I am overruling it.

Mrs. Williams: All right, sir.

Q. At 35th and Lowe, at the time of Commander Pierson's statement that conditions were riotous, [184] what, if anything, were the marchers doing?

The Witness: A. They were standing there on the sidewalk.

Q. Were they singing?

A. Not at that time.

Q. Were they chanting?

A. No, ma'am.

Q. Were they noisy?

A. No, ma'am.

Q. Were they shouting?

A. No, ma'am.

Q. Were they throwing rocks?

A. No, ma'am.

Q. Were they throwing eggs?

A. No, ma'am.

Q. All right. At 35th and Lowe, at the time Commander Pierson stated or requested the marchers to leave the area because the situation was worse and conditions were riotous, were the spectators shouting?

A. Yes, ma'am.

Q. Were they noisy?

A. Yes, ma'am.

Q. Were they shouting—I am sorry. I asked you that. [185] Were they throwing eggs?

A. Yes, ma'am.

Q. Were they throwing rocks?

A. Yes, ma'am.

Q. Were they shouting epithets such as, "Go home, nigger"?

A. They were shouting. I couldn't honestly say they were shouting that.

Q. All right, sir.

Now then, at that time, when you said that Dick Gregory answered, "We are not going to leave," and "We will remain here and let them arrest us," where were you? Were you standing—where were you standing?

A. On the street, on 35th Street.

Q. Where were you—

A. About—

Q. Pardon me.

A. About ten feet from Mr. Gregory, at the time.

Q. Officer, could you keep your voice up just a little bit.

A. About ten feet away from Mr. Gregory, I was standing. I was standing in the street on 35th Street.

[186] Q. All right, sir. And you could hear everything that he was saying, is that correct?

Mr. Elrod: Objection. He never stated that he could hear everything he said. He stated what he heard.

The Court: Sustained.

Mrs. Williams: Q. Could you hear everything he was saying?

Mr. Elrod: Objection. It is irrelevant and immaterial.

The Court: I am going to have to sustain that.

Mrs. Williams: All right, sir.

Q. Did you hear Mr. Gregory say, "Do we have a Constitutional right to be here?"

Mr. Elrod: Objection. Again, we discussed this in chambers, Your Honor. It is going back to this particular objection as to what was not said.

He stated that that is what he heard said, just like he stated that he saw a horn and cymbal, but to delineate what he did not see, he can go on infinatum.

Mr. Holt: You can ask him whether or not occurred certain other things on an attack of his credibility.

The Court: I am going to allow the question to [187] be answered.

Mrs. Williams, close your exhibit book there, please.

Mrs. Williams: Yes.

Will you read the question.

(Whereupon, the desired portion was read back by the reporter.)

The Witness: A. No, I didn't.

Mrs. Williams: Q. Did you hear Mr. Gregory—strike that.

Did you state, in answer to Mr. Elrod's question, that Mr. Gregory went up and down the line of marchers, making certain statements; did you state that?

The Witness: A. Yes, ma'am.

Q. Did you hear those statements?

A. Yes, ma'am.

Q. Did you hear Mr. Gregory say, as he went up and down the line, or as he stood on 35th Street between Union and Lowe, did you hear him say, "Do not resist, do not go limp"?

Mr. Elrod: Objection as to the relevancy and the materiality, as to whether or not he heard him when he stated what he heard.

[188] Mrs. Williams: He didn't state that he heard—

Mr. Elrod: He stated what he said he heard.

The Court: Overruled.

Mrs. Williams: No, I did not hear him say that.

Q. Then, the only thing you heard Mr. Gregory say was—

Mr. Elrod: I object.

The Court: Wait until she finishes.

Mrs. Williams: (Continuing) —is the statement, "We are not going to leave; we will remain here and let them arrest us." That is the only statement that you heard Mr. Gregory make at 35th Street between Lowe and Union, at the alley, prior—just prior to the arrest?

Mr. Elrod: Objection.

The Court: Overruled.

The Witness: A. That is the only statement I remember hearing.

Mrs. Williams: Q. And where was he when he made this statement? Standing still?

The Witness: A. He directed the statement to the marchers three times; at the front of the march, he walked down to the center of the line of marchers and directed that same statement and he walked towards [189] the rear, and directed that statement to them.

Then, he walked back to the front.

Q. Now, I believe you said that at that time three men took advantage of the opportunity to leave the area, is that correct?

A. Yes, ma'am.

Q. Do you recall whether or not any women were in the group that left the area?

A. No, ma'am, there were no women that left at that time, to my knowledge.

Q. So that out of the entire group, there were only three men who left, is that correct?

A. To my knowledge, there were just three that left, yes.

Q. Three men?

A. Yes, ma'am.

Q. Lieutenant, if you were to be told that two women and one man left the area, would your answer still be the same?

Mr. Elrod: I am objecting.

The Court: That is sustained.

Mr. Elrod: And I ask that the Jury be instructed to disregard the—

The Court: The Jury are instructed to disregard [190] the inferences to be drawn from the question.

Mrs. Williams: Now then, Lieutenant, at the time of the arrest, did you say there were one hundred police officers in the area at that time?

The Witness: A. About one hundred police officers, yes, ma'am.

Q. Do you remember whether it was one hundred less or one hundred plus—

Mr. Elrod: I am objecting, if Your Honor please. He said one hundred. One hundred less, or one hundred plus—I believe on direct he said, "Ninety, plus ten in civilian dress."

Mrs. Williams: No, he said one hundred.

Mr. Elrod: I am objecting to the argumentative form of the question.

The Court: I will sustain the objection. I think the question has been asked and answered, around one hundred.

Mrs. Williams: Q. And where were these approximate one hundred policemen at the time of the arrest on 35th, between Lowe and Union, if you know?

The Witness: A. Well, the whole one hundred police officers were not on 35th Street at this time.

Q. Officer, keep your voice up.

[191] A. All of the police officers in that area were not on 35th Street. They were spread out. Some of them were on 36th Street at the intersection of Lowe and Union, down the street, and also on Lowe Avenue, and on Union Avenue between 35th and 36th Street.

Q. How many police officers would you say were on 35th Street, between Lowe and Union, in the presence of this one thousand to one thousand, two hundred people that you have stated collected in the vicinity of 35th and—between Lowe and Union, at the time of the arrest?

Mr. Elrod: Objection. It assumes facts that aren't true.

The Court: Sustained.

Mrs. Williams: If the Court please, I didn't hear the basis for the objection.

The Court: You are assuming facts that are not in evidence, Counsel. The testimony was that the crowd was divided into two corners, and some were spread over from one corner to the alley. He didn't say there were one thousand to twelve hundred on any one corner.

Mrs. Williams: He said one thousand to one thousand, two hundred people, were in this vicinity [192] at the time this arrest was made.

The Court: That is right.

Mr. Elrod: Yes. You tried to place them all—

The Court: You tried to put them all on one corner.

Mrs. Williams: Q. Where were these one thousand to one thousand, two hundred people that you spoke about, the group of spectators that you spoke about? What specific location were they at?

Mr. Elrod: Objection. It doesn't state a time.

Mrs. Williams: Q. On the 2nd day of August, 1965, at the hour of the arrest of these Defendants.

Mr. Elrod: Well—

The Court: It has already been answered, but I will let him answer it again.

Mr. Elrod: At the hour or the time of the arrest?

The Court: At the time of the arrest, are you speaking of?

Mrs. Williams: You want me to change the word, "hour"?

The Court: No.

Mr. Elrod: The hour could be eight-thirty to nine-thirty.

The Court: At the time of the arrest, your question [193] is referred to.

Mrs. Williams: At the time these people were arrested.

Mr. Holt: He got the question.

Mrs. Williams: Q. Do you understand the question, Lieutenant, that I just propounded—

The Witness: A. I don't know just what you want me to answer, now.

Q. All right.

A. The question is, as to where the people were?

Q. I will ask it again.

When these Defendants were arrested, where were the one thousand to one thousand, two hundred people whom you testified had congregated in the area?

A. They were on 35th Street, between Union and Lowe, on the north side of 35th Street, at both intersections, at the corners of both intersections, and some were on the south side of 35th Street, east of the alley that runs between Union and Lowe.

Q. All right. Now, I will repeat: When these Defendants were arrested, how many police officers were on 35th Street between Union and Lowe where these one thousand to one thousand, two hundred spectators had congregated?

[194] A. About fifty-five police officers.

Q. Fifty-five out of the approximate one hundred, is that correct?

A. Yes.

Q. Or fifty-five in addition?

A. Fifty-five police officers were present on 35th, between Union and Lowe.

Q. All right, sir—

A. At the time the Defendants were arrested.

Q. All right. Now, if you will remember, how many police officers assisted—strike that.

How many of these fifty-five police officers assisted in the arrest of the marchers—

Mr. Elrod: Objection.

The Court: First of all—

Mr. Elrod: I am objecting, generally, to the relevancy and the materiality. Secondly, it is a matter not brought out on direct examination as to—

The Court: Sustained.

Mrs. Williams: Judge, it has a materiality. It certainly has a materiality, and I can certainly connect it up as we go on further with these witnesses.

Mr. Holt: Judge, as to his objection—

Mrs. Williams: And to the specific charge here.

[195] The Court: I will sustain the objection, Counsel. Do you want to make a record of it?

It is immaterial. It has no consequence; it doesn't tend to prove any of the issues in the case.

Mr. Holt: How can you tell until you know what his answer is, Judge? Inasfar as Counsel saying that it wasn't brought out on direct—

The Court: There is no charge of false arrest.

Mr. Holt: It is not a question of false arrest. It is a question of what took place at the time and place.

The Court: That is right.

Mr. Holt: The only thing that is material is that these Defendants were arrested. We will concede that they were arrested. We have a right to show everything that transpired.

Mr. Elrod: Once an arrest—

Mrs. Williams: He started at Buckingham Fountain to show the background.

The Court: We are—

Mr. Holt: This is getting into what took place out there, and the arrest does not necessarily cut off everything that is material any more than anything [196] that happened before the arrest. If you are going to say that the only thing that is material is the instant arrest, that is the most bland type of trial you can have. We have a right to show what took place, within reasonable latitude, in order to show the Jury and Court, so that they may know the circumstances surrounding the situation, both prior—everything surrounding this arrest, if it is material, and I think it is.

Mrs. Williams: I think it is material for this reason—

The Court: If you can convince me that it is material, I will let him answer.

Come in to chambers.

(Whereupon the following proceedings were had in chambers, out of the presence of the Jury.)

Mrs. Williams: I really want—the reason why I am asking this question and requesting Your Honor's decision is because, as Your Honor knows, these Defendants are charged with making or aiding in making a diversion tending to the breach of the peace, along with an improper noise, riot, or disturbance. [197] All right, we will be able to rule out, with this witness, the improper noise. Your Honor won't let us go into riots, and the disturbance.

Now, the last element of this particular charge is a diversion tending to a breach of the peace. If police officers are in an area to the extent of one hundred, or approximately one hundred, as this police officer has testified, what was their purpose in that area? To quell that diversion tending to a breach of the peace? We have already been able to negate riots, noise, or disturbance

of the peace within the limits of the City. The only other aspect I have to go into is this diversion tending to a breach of the peace.

Was anything they were doing diversionary to the extent that fifty-five police officers needed to arrest these people?

Mr. Elrod: If Your Honor please, the purpose for the police is not to effectuate arrests. It may be one of their purposes, but the main purpose, as was testified to by Lieutenant Hougeson, was to protect their presence.

If Your Honor wants to go into this, we can ask what happened an hour after the Defendants [198] left, was it restored to peace and quiet? The answer would be, of course, yes. The question of what fifty-one police officers were doing, or fifty, or ninety-five police officers were doing at the time of the arrest is really irrelevant. Their purpose for being assigned there was to afford protection at all times.

The Defendant's refusal to leave when requested to was, in fact, a diversion tending to a breach of the peace.

Mr. Holt: Oh, Mr. Elrod—

The Court: The issue is whether or not they are entitled to inquire of this officer as to how many were necessary to effectuate the arrest, the purpose being to show that it was necessary for all but four or five of the fifty-five or sixty police officers present at the site of the arrest to contain the crowd, rather than to actively assist in putting them in the wagon.

Mr. Elrod: The purpose of a police officer is not to effectuate arrests, entirely.

The Court: That is immaterial to prove the issue—

Mr. Elrod: That is my point.

Mr. Holt: I am a man that believes in case law and case authority. There is a case that just came [199] down in the Northeastern advance sheet. The most recent one which came in my office, Saturday, and I don't recall the title of the case, but it stands for the proposition that in a criminal trial, the Defendant is afforded the widest latitude in cross examination.

Taking that general proposition, which I don't think any of us quarrel with—

The Court: Particularly not me, based upon the rulings I have made to date.

Mr. Holt: All right. How does that apply to this particular situation?

I think Mrs. Williams is eminently correct in this. If it took—out of fifty-five policemen, if it took fifty to prevent a riot by other persons, this is material, and the Jury should know this.

Mr. Elrod says that it is not the purpose of the police to make arrests. Well, I guess we will all concede that this is so, but if at that time and place where we are charged with creating a riot they had some fifty odd policemen there so a riot would not take place, it took fifty of them to prevent our being attacked as opposed to putting fifty of us by four policemen into a van and taking us away. This certainly is material and the Jury should know this.

[200] The Court: This may be material to your case, but it is not part of the cross examination and it doesn't refute anything developed by the City in their direct examination, and I have no doubt but what you will be able to establish it without any question, before the trial is concluded.

Mr. Holt: That is not the purpose of cross examination, either, I respectfully submit. The mere fact that

cross does not refute what was brought out on direct does not limit it. The purpose of cross is to explore an area which the prosecution has opened up and left partially explored.

If the prosecution talked about this arrest and none of the police officers were there, whatsoever, then it opens the door for us to show the whole thing.

The Court: There is nothing in the record to indicate—there is an indication that one hundred officers were there, and that the arrest was made, period, in the general area.

Mr. Holt: If the prosecution, in direct examination, had this officer testify about this arrest in any way whatsoever, it has opened the door for the cross examination to explore the whole scene, because if we were limited—just think how ridiculous this [201] proposition is. If we were limited to only asking him questions which had already been explored on direct examination, cross examination, of course, would be nothing more than reiteration of direct.

We have a right to go into any door that he opens, and fully explore it.

Mrs. Williams: He opened the door, Judge, by asking specifically about the arrest. The Lieutenant was narrating at that time, and again I did not make an objection, because he was opening wider the door by stating how many police officers were in the area, the fact that he had called up additional officers, and that the arrest was made.

Now, he also opened the door by saying that at the time of the arrest that the Commander had stated that the situation was worse, the conditions were riotous.

Your Honor has prevented me from exploring this area of riotousness. The only way—yes, the conditions

were riotous. When I got to that point, Your Honor stopped me.

The Court: You have facts to show that they were riotous, but I haven't allowed this particular officer to give his conclusion, as that is his conclusion. [202] That is a matter of his opinion, that they were riotous, as he saw it, and that evades the province of the Jury.

You have the facts you need—

Mrs. Williams: All right. Now we are down to this place in this riotous condition. There were fifty-five policemen there. I am sure he testified on direct that there were approximately police officers at the time of the occurrence which was the arrest he was referring to, on direct examination. Nevertheless he has brought it down to fifty-five police officers that were in the area at the time that the Commander said the conditions were riotous.

Now, it is to our case, in my opinion, very important to show, to reiterate, and to hit on the minds of the Jury and prove that the riotous condition, which he has testified to, which the Commander said existed was handled by police officers on behalf of the spectators by "X" number of police officers on behalf of the spectators, and not on behalf of the marchers; that only "X" number of police officers stood by while the marchers went into the van, while "X" number of—

Mr. Elrod: Pardon my ignorance, but I still can't [203] see the relevance or materiality of how many police officers it took to open van doors.

Mr. Holt: It is a question of who was riotous.

Mrs. Williams: Who was riotous.

The Court: I think the City and State are headed toward the same proof, that the riot was precipitated

because of the attitude of the spectators, occasioned by the presence of the paraders, under the circumstances.

Mr. Elrod: Yes.

The Court: I don't think there is an issue there.

Mr. Holt: It is not a question of whether there was an issue. It is a question of—

The Court: When I say "issue," I mean a question of fact.

Mr. Holt: We will concede that every witness the City will put on will testify that the spectators were creating the riot, but we certainly are not limited in cross examination, and we have a right to have the Jury fully understand that factual scene.

Mr. Elrod: Lieutenant Hougeson testified time and again that the demonstrators were not rioting, yelling, and singing.

Mr. Holt: You say the proof is accumulative—

[204] Mr. Elrod: You can't be redundant, even on cross examination.

The Court: We haven't got to this point.

The testimony, as it now stands, is that there were fifty-five to sixty police officers present at the scene of the arrest, and you sought to go into the question of how many of these fifty-five or sixty were engaged, physically, in the actual arrest of the individuals.

At that time an objection was made. I see where you want the record to indicate or you anticipate the situation will be such that we indicate that the vast majority of these officers were necessary to control the crowd, rather than physically place the Defendants in patrol wagons.

Mr. Elrod: Then, that wasn't enough to—

The Court: I don't see that it is material to your case.

Mr. Holt: I can. We will seek, looking at this isolated situation, to try to ascertain who was creating a riot, because this is what this case is all about, the whole—who created the riot if a riot was there, and I can show where this would be something a reviewing court would be interested in, [205] how many policemen were there, how many were controlling them, where were they, what were the rioters doing, and what were the spectators doing.

This is how you determine if a riot was there. What were the people who had the obligation and duty to maintain peace, what were they doing, and this is the whole crux of the case.

The Court: Can you rephrase your question by asking him, "How many of the fifty-five or sixty police officers present at the scene of the arrest actively engaged in the arrest?" I want this thing to terminate.

Mrs. Williams: Yes, Judge.

The Court: Off the record.

(Whereupon, there was an off the record discussion.)

(Whereupon, the following proceedings were had in open Court, in the presence of the Jury.)

Mrs. Williams: Q. Lieutenant, how many police officers, of the fifty-five in the area, were actually engaged in effecting the arrest of the marchers—

Mr. Elrod: Objection.

[206] The Court: Let her finish.

Mr. Elrod: I thought it was finished.

Mrs. Williams: (Continuing) —on August 2nd, 1965?

Mr. Elrod: Objection.

The Court: Overruled.

The Witness: A. About twenty police officers.

Mrs. Williams: Q. And the remaining thirty-five police officers, what if anything were they doing?

Mr. Elrod: Objection.

The Court: Overruled.

The Witness: A. Controlling the crowd of spectators that were there.

Mrs. Williams: Q. Now, at the time of the arrest, did each of the marchers walk into the patrol wagon?

Mr. Elrod: Objection. The demeanor of the Defendants in walking into the patrol wagon or running in, or crawling in, is irrelevant and immaterial to the issues herein.

Mrs. Williams: Well, it would be impossible to crawl in, but as long as he said it, I think the Jury ought to know how they got in there.

Mr. Elrod: I don't think it is material.

The Court: There is no charge of resisting [207] arrest, or anything of that kind. The objection will be sustained.

Mrs. Williams: Q. What, if anything, did the twenty police officers do in effecting the arrest?

Mr. Elrod: Objection.

The Court: I am going to let him answer and get it over with.

The Witness: Shall I answer that?

The Court: Tell us the manner in which the arrests were made.

The Witness: A. Just maintaining order in placing the people in the vans, opening the doors of the vans, standing in a line, and seeing that the marchers walked into the vans.

Mrs. Williams: Q. Did you hear—at the time that Captain Pierson was addressing the marchers, did you hear Captain Pierson—strike that.

When Captain Pierson—strike that.

You stated on direct examination that Captain Pierson addressed the marchers over an electrical instrument; is that correct?

The Witness: A. Yes, ma'am.

Q. When he addressed the marchers over this electrical instrument, did you hear Captain or Commander [208] Pierson state that he was removing the marchers for their protection?

Mr. Elrod: Objection.

The Court: Sustained.

Mrs. Williams: Q. Did Captain Pierson state that he was removing the marchers from the area for a given reason?

Mr. Elrod: Objection.

The Court: Sustained.

Mrs. Williams: Judge, may I know the basis of the objection? I don't understand the basis of the objection. I am thinking that it is hearsay, but it certainly—that couldn't be the reason.

Mr. Elrod: It is irrelevant and immaterial what Commander Pierson said.

The Court: What probative value does that have?

Mr. Holt: It makes a lot of difference why he arrested these people. It is the crux of the case.

Mrs. Williams: His—

The Court: The Jury will determine whether the offense was committed or not committed, based on the evidence they hear.

Mrs. Williams: May I ask the question—

The Court: Certainly.

[209] Mrs. Williams: Q. When Commander Pierson addressed the marchers over the electrical instrument, what did he say?

The Witness: A. "I am aking you to leave the area. Your presence here, at this late hour"—at the time of the arrest?

Mrs. Williams: At the time of the arrest, yes.

Mr. Holt: Keep your voice up, Lieutenant, please.

The Witness: I am asking—

Mr. Elrod: I object, if Your Honor please. At the time of the arrest, does this mean what did he say exactly when he made the arrest, or prior thereto?

Mrs. Williams: At the time.

The Court: I understand that this was at the time that he testified on direct that he took the bullhorn and spoke, immediately before.

Mr. Elrod: Immediately before. I wanted to make sure the witness understands the question. It was not clear to me.

Mrs. Williams: The witness understands, Judge.

The Court: He may answer.

The Witness: A. "I am asking you to leave this area. Your presence here has created a near riotous situation." He made that statement three times. Then [210] he said, "Anyone wishing to leave will be provided with a police escort out of the area."

Mrs. Williams: Q. Have you recounted to this Judge and this Jury all the statements that Commander—that you heard Commander Pierson make just immediately prior to the arrest when he addressed the group over the bullhorn?

The Witness: A. Yes, ma'am.

Q. You do not recall any other statements, is that correct, sir?

A. No, ma'am.

Mrs. Williams: I have no further questions.

Redirect Examination by Mr. Elrod.

Q. Lieutenant, you stated that you saw spectators in the street. When did you see spectators in the street; at which time?

Mrs. Williams: Objection as having been asked and answered.

The Court: It will be sustained, unless you have reference to an event brought out on cross examination that was not covered in the direct examination.

Mr. Elrod: Q. On cross examination you stated that at 36th and Union at approximately 9:05 p.m., you saw [211] certain spectators run into the street.

Did you not have policemen there at that intersection, Lieutenant?

Mrs. Williams: Objection, if the Court please, to the form of the question.

The Court: Sustained.

Mr. Elrod: There's an objection as to what?

The Court: This is redirect, Counsel.

Mr. Elrod: That is right. This was asked on redirect examination.

The Court: It was also asked on cross examination. It is repetitious.

Mr. Elrod: Oh, as to repetitiousness. He already stated—

The Court: Yes.

Mr. Elrod: I have no further questions.

The Court: You may step down, sir.

(Witness excused.)

* * *

[266] Q. Sergeant, what did the marchers do at that time, if anything?

A. They were singing and chanting and carrying placards and they marched south on Lowe Street.

Q. Did you remain at 35th and Lowe?

A. Yes, my assignment was to stay right at 35th and Lowe.

Q. Sergeant, could you hear what the marchers were singing and chanting at that particular time?

A. Well—

Q. Yes or no? A. Yes, sir.

Q. Could you state to the jury and to the court what, if anything, you heard?

A. I am not very musically inclined, but they had a chant, "Ben Willis must go," and then they sang—

Q. You say you are not musically inclined?

A. No, I am not. I will do the best I can.

They would say, "Ben Willis must go," that would be a shout. "When?" "Now." They had a few songs, "We shall overcome," and stuff like that. Then "Ben Willis must go, and Snake Daley, also." They had a few little things they would say.

[267] Q. How loud was this chanting or song that you heard emanating from the marchers at this time?

A. Very loud. I could hear them—As I say, I remained at 35th and Lowe, and you could hear them as they marched all the way around the block.

As I say, when you have a group of 65 or 85 people chanting in unison, it makes a rather loud sound.

Q. Sergeant, you continued to remain at 35th and Lowe? A. Yes, sir.

Q. Did you observe the marchers walking on Lowe?

A. They marched south. They passed the Mayor's house, down to 36th Street.

Q. Did you observe—

A. Then we would lose sight of them.

Q. I see. You lost sight of them at 36th Street?

A. Yes.

Q. Did you observe whether they turned east or west on 36th Street, or whether they just went out of your sight?

A. They turned west on 36th Street.

[269] Again, this was a continuous thing. They were chanting and singing, and then as I say, after that first trip, it got to be close to 8:30, give or take another few minutes. They stopped the singing at this point.

Q. Now, sergeant, can you tell me what you observed at the corner of 35th and Lowe as far as spectators were concerned after this first half hour?

A. This is a spontaneous thing at its best. The crowd began to build up—

Mrs. Williams: Objection as to not being responsive.

The Court: Sustained.

Mr. Elrod: Q. Tell me what you observed.

The Witness: A. The crowd began to increase in number.

Q. You stated that when they first got there there were a few people, and it built up to about 25 on each corner. Now, at approximately 8:20 or 8:25, how many people were on the corners?

A. Better than a hundred. They were split up now, because we tried to keep them apart—

* * *

[277] The Witness: I am sorry.

Mr. Elrod: Q. Was there a crowd of people between 35th and 36th on Lowe Avenue?

The Witness: A. Well, at 36th and Lowe, there was a large crowd of people, and as the marchers would arrive in this area, we would lose sight of them due to the crowd.

Q. I see. Sergeant, at approximately 9:25 p.m. how many spectators or neighbors were in the vicinity of 35th and Lowe at that particular time?

A. Anywhere from 1,000 to 1200 people. It had—the crowd had risen to a large proportion and had become ugly, very ugly.

Q. What do you mean by "ugly?"

Mr. Holt: Objection.

Mrs. Williams: Objection.

The Court: Sustained as to the use of the word "ugly."

Mr. Elrod: Q. What was the crowd doing or saying that you heard at approximately 9:25 p.m. in the vicinity of 35th and Lowe?

The Witness: A. They were saying, "Let's get them," and with this they would step off the [278] curb to try to cross 35th Street, and we would push them back with force.

Q. Would anybody get through your police lines?

A. Once in a while somebody would run out, and we would grab ahold of them and throw them back into the crowd.

Q. Did you notice any objects being thrown?

A. This was a problem behind the crowd. You could see these teenagers behind the crowd. You could see a boil of activity and something would come over our heads, and I or my partner would go down and try to

apprehend who was doing it. You couldn't see who was doing it. They would vanish into the crowd.

I remember this very vividly. Between Union and Lowe Avenue on the north side of 35th Street, it was packed from the curb line to the houses. They had them up on steps and everything else. It was a bad situation—

Mr. Holt: I object. It is a conclusion.

Mr. Elrod: "It was a bad situation," yes.

The Court: It will be stricken.

• • •

[283] A. "We don't have to leave the neighborhood; we will stay and be arrested if we have to."

Q. What, if anything, did you hear Commander Pierson say at that time?

A. Well, then, after they refused to leave the neighborhood he ordered their arrest.

Q. Sergeant, at immediately prior to Commander Pierson's first making these requests that you heard, what was the size of the neighbors or spectators between Union and Lowe, on 35th Street?

I am talking about immediately prior—

A. I would say there were 2,000 people or better.

Q. Sergeant, what, if anything, were these spectators or neighbors saying?

A. "Get out of here, niggers, and go back to where you belong"—

Q. With the elimination of profanity.

A. Profanity eliminated, "Get out of here, niggers, go back where you belong or we will get you out of here." With this there were eggs being thrown and there were several teenagers with [284] pop bottles and stuff, and we had to watch that very closely, because once that started we wouldn't be—

Mr. Holt: I object.

The Witness: A. (Continuing) Once that started, we wouldn't be able to hold the stuff back.

Mr. Elrod: Q. You say that you saw teenagers with pop bottles?

The Witness: A. Yes.

Q. What, if anything, did you say at that time, sergeant?

A. I and my men were doing the best we could—

Mr. Holt: Objection.

Mrs. Williams: Objection to that. What his best was—

The Court: He may indicate what he was doing.

Mr. Elrod: Q. You were trying to hold the people back?

The Witness: A. Yes, sir.

Mrs. Williams: Objection to the corporation counsel's testifying for him. He knows what he was doing.

* * *

[292] Mrs. Williams: If the Court please, was the objection to letting this Jury know what happened?

The Court: The Officer will answer the question.

Mr. Elrod: I have no objection.

The Court: Can you repeat the words that were said, as nearly as you remember, Officer?

Mr. Field: If it please the Court, we ask that any juveniles in the courtroom be removed from the courtroom.

Mrs. Williams: I object. There were juveniles present at 35th and Lowe—

The Court: That is immaterial.

Just a moment. The boy's mother has seen fit to have him leave the room, so this is not a problem.

Mrs. Williams: All right. Now, Officer—

The Witness: A. I heard various utterances such as God damned nigger, get the hell out of here, and such things as that. Oh, "Get the hell out of here or we will break your blankety-blank head open."

Q. What was the "blankety-blank" language?

A. I am not in the habit of using this kind of language in the presence of ladies, and I have the utmost respect for you.

[294] Now at this time, Officer, I believe you stated that there were twenty to twenty-five people present, is that correct, at 35th and Lowe?

The Witness: A. I—

Q. Pardon me. Is that correct?

A. No, I am quite sure that I said that there were twenty-five on either corner.

Q. Well, Officer, at the time that you were first questioned by Mr. Elrod, did you state that at 35th and Lowe, on Lowe, on August 2nd, 1965, that you arrived at approximately 7:50 p.m., and that there were only a few spectators and that you told them to move to the north side of the street?

A. And we split them up.

Q. All right. Now, when you said that there were only a few spectators, how many were you referring to?

A. I am referring to—initially, we had a few. I call a few what was in comparison with what we ended up with. When I say twenty-five on each corner, to me that is a few.

Q. All right, sir—

A. That is a few.

Q. And which corner were you on?

* * *

[298] A. I continued to do what I did at all times. I tried to always look and see if there was going to be any threat or any movement of somebody rushing at the marchers. I was there to not only control the crowd, but to protect the marchers. This was a two-way street. I was constantly on the alert to see if somebody was gong to rush across the street and do some bodily harm to the marchers, and this was what was uppermost in my mind. We didn't want any harm to befall these people.

Q. I see, sir. While you were protecting the marchers, did you see any of the spectators throwing eggs?

A. Not at this point.

Q. At any point, did you see any of the spectators throwing eggs?

A. Whenever I saw anything, it came from the rear of the crowd. I can't say I ever saw an individual do it. It always came from overhead, and there was quite a bit of people, and it was a problem.

Q. Yes, but before it built up and these twenty-five people were on the corner—

A. No, there was nothing thrown by these people [299] at this time. Just words and so forth.

Q. Now, Sergeant, did the crowd build up from twenty to twenty-five on either corner of the north side of the street, and immediately to a group of one thousand or one thousand, two hundred, or was this a gradual process?

A. Steady, steady.

Q. It was little by little over a period of an hour—

A. It just kept coming and coming, building up.

Q. Yes, sir, approximately how long did you say the marchers were in the area, prior to the arrest?

A. An hour and a half, give or take—

Q. From about ten minutes to eight until approximately 9:25 p.m.?

A. Yes.

Q. So about an hour and thirty-five—thirty or thirty-five minutes, give or take. Is that correct?

A. Yes.

Q. And during this hour and a half, this crowd continued to grow by hundreds and hundreds more, is that correct?

A. Well, this is an odd thing. It was at the latter part, within that last half an hour, at nine [300] o'clock, when they just seemed to come from everywhere at that point, and from that first hour, there was a steady build up, a few hundred, but nothing we couldn't take care of. It just seemed that from nine o'clock on, in that last space of twenty to twenty-five minutes, they just seemed to come from everywhere.

Q. Is that the point that you felt it was something that you couldn't take care of?

A. I would say within another ten minutes or so that the crowd had got to the point where it was—it was a riotous condition, ready to break, and at that time, we couldn't have taken care of them.

Q. Yes—

A. Prior to that, we could have handled the situation. Around nine o'clock, as I say, they seemed to come from everywhere, and we just didn't have enough there to handle it.

Q. Yes, sir, so you would say that around nine o'clock, the police on hand could not take care of the spectators, is that correct?

A. It was ten after nine or fifteen after nine, in that area. That is when it built up very quickly, and we simply didn't have enough men at that time to handle this.

[301] Q. And this became obvious to you, is that correct?

A. It sure did.

Q. At that time, did you convey this message to your superior?

A. Yes.

Q. Did you ask for additional help—

A. It is not my prerogative to ask.

Q. No, sir, did you ask—

Mr. Elrod: Objection.

The Court: Sustained.

Mrs. Williams: Q. Did additional help come?

The Witness: A. We had men—

Q. No, sir, did additional help come?

A. We did—the Captain—I should say Commander, he did rush in a few more men that were available, but that still wasn't enough. There were a few cars that he had available that he brought in, but it still wasn't enough. I noticed that there was a displacement of men —I couldn't see, being where I was, at 35th and Lowe, so I can't tell you everything he did in this entire area. I was a very small segment of this force, and I am subservient to my superior, and I stayed where I was told to stay.

• • •

[349] Q. Now Sergeant, you stated that you were standing at 36th and Lowe, approximately how long—how long were you standing there that night?

A. I went out there from the station where I was on reserve, from about a quarter of seven. I went down to 37th with my men—36th Street with my men, my eight men. I put them on the corner around there. Then, I went into the taverns around there and I asked them to—I requested them that when the marchers came in, would they close their tavern.

Mrs. Williams: Objection. The Court: Sustained. There is an objection made to the narrative form of the answer.

Mr. Elrod: What did you do when you reached this location, at approximately a quarter of seven that evening?

The Witness: A. I went into the tavern on the southeast corner of 36th and Lowe and I asked the owner if he would—I request the owner if he would close the tavern while the march was going on.

* * *

[393] Q. During the entire time that you saw the marchers that you had occasion to observe, did you at anytime see any of the marchers throwing any stones?

A. No, I didn't.

Q. Did you at anytime see any of the marchers throwing any eggs? A. No, I did not.

Q. You stated you observed spectators in that area. Did you observe any spectators on the corner of 36th and Union throwing any eggs?

A. Yes, there were eggs and rocks coming out of the crowd as it grew larger.

Q. Did you observe any particular individual—

A. No, I did not.

Q. The last time that you observed the marchers, shortly after nine, at that time were they singing and chanting?

A. No, they were not.

• • •

[403] [Q.] At anytime on August 2nd, 1965, did you observe the marchers throwing any eggs?

The Witness: A. The marchers throwing any eggs?

Q. Yes.

A. Not to my knowledge, I didn't.

Q. Did you observe marchers throwing any rocks?

A. No, I didn't.

Q. Now, did you observe—did you have an occasion, around 9:30 or 9:25, whatever time it was that you stated, to observe any of the spectators in this immediate vicinity where you were stationed?

A. Not any individual spectator, no. I did not observe any individual spectator, but I know there were eggs and rocks being thrown, because I was missed with an egg. It hit the mailbox.

Q. Did you—well, you answered that question.

At this time, would you tell the court and Jury, to the best of your recollection as to how many spectators at this time of night there were in this area?

A. At this time of night, approximately twenty or twenty-five after nine—

• • •

[407] The Court: Did he make a response?

The Witness: He made a response to the marchers.

The Court: Yes—

The Witness: But not to—

Mr. Chambers: Q. Were you in hearing distance as to what this response was?

The Witness: A. I was.

Q. And will you tell the court and jury what this response from Dick Gregory was, to the request of Commander Pierson, to leave the area?

A. He says, "We have not broken any laws." He says, "We are not going to leave the area, we will to be arrested."

• • •

[475] A. Are you talking about on Union?

Q. Yes, sir, at the time that you became apprehensive?

A. No, I didn't hear anybody order them to disperse.

Q. I see. Did you, at that time, observe anyone order the spectators to disperse?

Mr. Elrod: Objection.

The Court: He may answer. I thought you asked that question just two questions back, but he may answer again. I may have misunderstood you.

Mrs. Williams: No, this is—

The Court: He may answer.

Mrs. Williams: Well, if the Court please, if he has already answered it, I wouldn't ask—

The Court: I thought your question about two questions back was whether or not the spectators had been ordered to disperse, and his answer was, "No."

Mrs. Williams: No, this was before they blocked off the traffic, I think. I may be wrong.

The Court: Go ahead.

The Witness: A. No, I didn't.

Mrs. Williams: Q. Then, as the marchers approached [476]the area of 35th and Union, at or about the hour of nine-twenty p.m., and you heard Commander Pierson state, "Your presence is causing a near riotous

condition," did you at that time observe anyone order the spectators to disperse?

The Witness: A. No, I didn't.

Q. At the time that you observed Commander Pierson state, "Your presence is causing conditions which will lead to harm," did you at that time observe anyone order the spectators to disperse?

Mr. Elrod: I am objecting, if Your Honor please. The time of these sayings, they were all at one time. We are not trying to be technical with you, but I think the question previously asked and answered would cover these situations.

The Court: Well, as I understand it, these questions refer to different intervals of time, and as this last rotation proceeded—you are now up to the final place, as I understand it. Is that—

Mr. Elrod: The last two questions were on the final rotation as up to that time.

Mrs. Williams: Do I understand—

The Court: My understanding of the question is, that you have asked this question about the various [477] positions they were at from one location to—

Mrs. Williams: Right.

The Court: Now, you are up to the final rotation.

Mrs. Williams: That is right.

Mr. Elrod: He just answered it before.

The Court: Well—

Mrs. Williams: I am objecting to Counsel's statement in front of these Jurors.

The Court: His statements are not evidence, and they will draw no inference from it.

You are up to the point where the parade finally stopped, is that the point?

Mrs. Williams: I am up to the point where he heard certain things happen. I think this is the point where—

The Court: Very well, very well.

Mrs. Williams: Q. Sergeant, to clarify this point, at the time that you testified in answer to Mr. Elrod's question that you heard Commander Pierson state, "Your presence is causing conditions which will lead to harm," were you then at 35th Street between Union and Lowe?

The Witness: A. We were.

Q. All right, sir. Now, at the time that you [478] testified that you heard this remark made, did you then hear or observe anyone order the spectators to disperse?

The Witness: A. No, I don't believe I did.

Q. Now, was it at this point that you were in the process of ducking a few eggs?

A. That is right.

Q. Were any rocks or stones being thrown, as far as you know?

A. There were things coming, and as I say, the eggs bounced next to me. This I know. I just ducked down from one of them. There were a few thrown. One just missed my head.

Q. And as you were in the process of ducking the eggs, did you, at that time, hear or observe anyone order the spectators to disperse?

Mr. Elrod: I am objecting, if Your Honor please.

The Court: He may answer.

The Witness: A. No, I didn't.

Mrs. Williams: Q. Now, when did you first notice the bullhorn which you have referred to in your direct examination being used by Commander Pierson?

The Witness: A. Right at the alley there, at 35th and Lowe, between Lowe and Union.

• • •

[491] Q. By "street," I mean the sidewalk or the whole street.

A. The whole street, all the way around.

Q. Yes. Now approximately how many spectators did you notice on or near this line of march at that time?

A. There were quite a few, quite a few. Some of them were in the street and they were trying to walk along with the line of march. We would have to tell them to get back over to the other side of the street, approximately down the whole street. It is impossible to say. It was quite a few. I would say four or five thousand people, it looked like to me.

Q. What else happened with this line of march between 37th and 35th on Union?

A. At the time I got out, they were just walking along carrying the signs and I could hear them whispering their conversations.

Q. Now Officer, did this line of march stop at any particular point between 37th and 35th on Union?

A. Yes, they did stop.

• • •

[495] Q. Which corner?

A. At 35th and Union.

Q. What else did you notice, if anything, Officer, in regard to the spectators?

A. There was a lot of light that came from a TV set-up that they had in the street there.

Q. At which corner?

A. 35th and Union.

It seems when the light came on, the people got real loud and started throwing a lot of eggs and rocks, and I was ducking them, and so forth.

Q. Did you see who was throwing these eggs and rocks?

A. No, they came from out of the crowd somewhere, from the rear of the crowd.

Q. All right. Now, if—were they at 36th and Union at this time, and proceeding south, is that correct?

Mrs. Williams: If the Court please—

The Court: Sustained.

The Witness: A. They had passed 36th and had come to 35th.

• • •

[507] Q. And were you ordered out to control the spectators, also?

A. No, I was not.

Q. Why were you ordered out of the van, if you know?

A. I was ordered out to protect the marchers as they walked in the line of march.

Q. Now then, what if anything did you do to protect the marchers?

Mr. Elrod: Objection.

The Court: He may answer.

The Witness: A. I was to walk along with the line of march, to the left of them, which would be the curb-line, to keep any such spectators from backing through towards the marchers.

Mrs. Williams: Q. Did you see any of the spectators —as you walked around protecting the marchers, did you see any of the spectators throw rocks, eggs, stones et cetera?

The Witness: A. Yes, I didn't see the persons, but I saw eggs and rocks being thrown from the crowd. I was ducking them, myself.

• • •

[524] Mr. Chambers: Q. At the time that you observed the spectators, what if anything were they doing at that particular time?

The Witness: A. They were very, very loud. There were cars stopped in the street and horns were blowing and people were yelling. It was just a big commotion.

Q. Did you observe any rocks being thrown?

A. I saw rocks, yes.

Q. Did you observe any eggs being thrown?

A. Yes, I did.

Q. Did you see any particular individual throwing these eggs?

A. I saw them coming from the crowd.

Q. At this time and in this particular vicinity, did you have occasion to observe Commander Pierson?

A. Yes, I did.

Q. To the best of your recollection, how far were you from Commander Pierson?

A. I would say about thirty feet.

Q. Were you able to hear what Commander Pierson was saying, if anything?

* * *

[527] Q. Did you have an occasion to observe the spectators—were you in a position to observe the spectators, each time around?

A. Yes, I was.

Q. Did the spectators grow in number as you went around?

A. Yes, they did.

Q. To the best of your recollection, could you estimate approximately how many spectators you observed on your first time around?

A. I would say surrounding the whole block, as we went around from corner to corner at 36th Street from Lowe to Union, they grew from about two hundred to maybe five hundred. Altogether I would say there were about twelve hundred people.

Q. On your last time around?

A. Not the last time. There were about twelve hundred people on 35th Street, alone, on the last time, but on the two sides and 36th Street, there were about the same number.

Mr. Chambers: You may inquire.

* * *

[530] Mrs. Williams: Q. Did you get an order from Lieutenant Hougeson to assist in dispersing the spectators?

Mr. Elrod: Objection.

The Witness: A. My orders—

The Court: Sustained.

Mrs. Williams: Q. Were any of the spectators taken into custody, as far as you know?

Mr. Elrod: Objection.

The Court: Overruled.

The Witness: A. Not as far as I know.

Mrs. Williams: Q. At the time—you state that some of the spectators—strike that.

Did you state that at a point, some of the spectators were in the street?

The Witness: A. They were constantly crossing the street.

Q. All right.

A. They were back and forth, back and forth.

Q. Were they merely crossing the street or were they walking in the street?

A. They would come over, and the police would shove them back. They kept running up and down the street, and coming out of their houses and everything.

* * *

[535] HOWARD M. PIERSON, called as a witness herein, by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Elrod.

Q. What is your name, please?

A. Howard M. Pierson.

Q. Where do you reside?

A. 3501 South Lowe is my work.

Do you want my home address?

Q. Yes.

A. 7600 West Palatine Avenue, Chicago 31, Illinois.

Q. What is your business or occupation?

A. Commander of police, assigned to the Ninth Police District.

Q. By whom are you employed?

A. By the City of Chicago.

Q. Commander, how long have you been engaged in your present capacity as a commander of police?

A. About four years.

Q. And how long have you been assigned to the Ninth District, as commander thereof?

[536] A. Approximately two and a half years.

Q. Prior to being commander of the Ninth District, what was your assignment, duties and responsibilities?

Mrs. Williams: If the Court please, I will enter into a stipulation that Commander Pierson is a well qualified

officer, but I will object to testimony, as to previous assignment of his duties, as of the 2nd of August, 1965.

The Court: Very well. It is stipulated that the officer is qualified.

Mr. Elrod: Well qualified.

Mrs. Williams: Well qualified, yes.

Mr. Elrod: The City will enter into that stipulation.

Q. Commander, what were your duties and responsibilities on the 2nd day of August, 1965?

The Witness: A. I was commander of the Ninth District, and my duties were to protect life and property of all of its citizens in my district.

Q. Calling your attention to that specific date, Commander, what if anything—strike that.

What did you see or observe at approximately eight o'clock, p.m.?

A. At approximately eight o'clock, p.m., or a [537] few minutes before, I observed a large number of marchers marching west on 35th Street, approaching Wallace Street.

Q. Commander, did you know these marchers were coming at this time?

A. Yes, I did.

Q. And how did you know that these marchers were about to be coming?

Mrs. Williams: Objection, if the Court please.

The Court: Sustained.

Mr. Elrod: Q. What did you then do, after observing a large group of marchers proceeding west on 35th Street?

The Witness: A. Prior to their arrival I had placed personnel—

Mrs. Williams: Objection as not being responsive. I am sorry.

The Court: Sustained.

Mr. Elrod: Q. What did you then do after you observed these marchers approaching?

The Witness: A. I observed them as they approached Lowe Avenue. I heard them singing and chanting. I observed many placards with signs that read, "Ben Willis—"

Mrs. Williams: I object to the narration.

[538] The Court: Sustained.

Mr. Elrod: Q. What did the marchers do as they came to Lowe Avenue, on 35th Street?

The Witness: A. They were singing and chanting.

Q. Could you hear, at that time when they came to the corner of 35th and Lowe, what they were singing?

A. I could.

Q. What, if anything, did you hear them singing?

A. "Hey, hey, what do you know, Ben Willis Must Go," and "Hey, hey, what do you know, Mayor Daley must go, also," and another about defacto segregation.

Q. Officer, what did the marchers do as they reached the intersection of 35th and Lowe?

A. They crossed to the west side of 35th Street and walked south on Lowe Avenue.

Q. Did you go with the marchers at that time?

A. I did.

Q. What, if anything, did you hear the marchers doing at that time?

A. They were still singing and chanting and a number of them said, "We are going to the home of the snake, the snake pit is down the street."

Q. Commander, how loud was the singing and chanting that you heard?

[539] A. Extremely loud.

Q. Commander, did you see them carrying placards, at this time?

A. I did.

Q. What, if anything, did you see on the placards?

A. "Ben Willis Must Go, Now," in large signs, and underneath the signs, other placards saying, "Mayor Daley, fire Ben Willis."

Q. Commander, when these marchers approached the intersection of 35th and Lowe, as you stated, at approximately eight o'clock, p.m., were there any spectators in that immediate vicinity?

A. There were, and we had them moved behind wooden barricades that we had erected at the corner.

Q. What, if anything, were these spectators doing?

A. Just standing there watching and talking.

Q. Approximately how many spectators were there at that particular time?

A. Twenty-five, thirty, somewhere around that vicinity.

Q. Were the spectators, at this time, carrying any signs?

A. No, sir.

[540] Q. Commander, as the marchers proceeded south on Lowe Avenue, what did they then do?

A. They kept chanting and singing.

Q. They proceeded how far south on Lowe Avenue?

A. On the way towards 36th Street, several youngsters were carrying signs reading, "We love our Mayor," and they tried to get into the march. Some got in front and some got behind the marchers, and I had the officers chase them to the east side of Lowe Avenue.

Q. How far south on Lowe Avenue did the marchers go at this time?

A. To 36th Street.

Q. What then did they do?

A. They marched west to Union Avenue, which they had done on two other previous occasions.

Q. Commander, were there any police officers stationed at the intersection of 36th and Lowe?

A. Yes, sir, there were.

Q. Who had stationed them there?

A. I had.

Q. Commander, approximately how many police officers had you stationed at the intersection or at the corners of 36th and Lowe?

[541] A. Approximately ten men on the corner, and then another ten on each side going down the street, to keep any spectators on the east side of Lowe and the south side of 36th Street.

Q. What type of personnel were these police officers?

A. They were task force and district personnel from other districts.

Q. Now Commander, as you proceeded west on 36th Street, and reached the corner of 36th and Union, was there any police officers stationed there?

A. Yes, sir, there were.

Q. By whom were they stationed?

A. By myself.

Q. And approximately how many were at that corner at that time?

A. Approxmately the same number, ten men on the corner and ten spread along toward a little bit west on 36th Street and north on Union, to keep any spectators on the west side of Union Avenue.

Mrs. Williams: Wait, if the Court please.

I will enter into a stipulation as far as [542] Commander Pierson's testimony is concerned. I am willing to enter into a stipulation that if he were asked these questions, he would state substantially the same thing as the other officers testified. All of this testimony here has been accumulative. There has been three days of accumulative testimony—

Mr. Elrod: As to certain portions, I would agree to the stipulation. However, there are certain instances that are peculiar to the knowledge of Commander Pierson.

Mrs. Williams: Only that which has not been covered by any other witness—

Mr. Elrod: I prefer to explore—

The Court: Let's see if we can't save a little time. Let's find out what your differences are.

(Whereupon, the following proceedings were had in chambers, outside of the hearing of the Jury.)

Mrs. Williams: My reason for making this suggestion, if the Court please, is because in three days of testimony, the City has furnished various police officers. Every witness has been a police officer who was in or around the area of 35th and [543] Lowe at or about the hours of 8:00 to 9:25, p.m., on the 2nd day of August, 1965. I maintain and submit to this Court that the evidence which has been elicited from each of these witnesses has been accumulative.

For this reason, I am willing to enter into a stipulation with the Corporation Counsel that if Commander Pierson were to testify, he would substantially substantiate and corroborate the testimony heretofore offered by the other ten witnesses who have preceded him or the other witnesses who have preceded him on the witness stand.

The Court: Is there anything you need or—

Mr. Elrod: Yes.

The Court: Maybe we could stipulate to that, if you would indicate what it is.

Mr. Elrod: As to the conversation had between the Defendant, Dick Gregory, and Commander Pierson, in the 3500 block on Union. No other police officer testified as to the direct conversation at that time.

Mrs. Williams: Yes.

Mr. Elrod: It was not over a bullhorn. It was—

[544] Mrs. Williams: No, I think Lieutenant Hougeson—

Mr. Elrod: Well, Lieutenant Hougeson—

Mrs. Williams: (Continuing) —testified to that, that he approached—

Mr. Elrod: Hougeson?

Mrs. Williams: Hougeson, yes, that he approached him on Union and told him that the situation was getting out of hand. I believe—I am almost positive that this is what he said.

Do you have that in your notes, Mr. Corporation Counsel?

Mr. Elrod: I am not sure.

Does the Judge recall that.

The Court: I didn't detail my notes.

Mrs. Williams: I am almost positive.

The Court: My recollection is that—well, can we agree now to what the testimony will be, and incorporate that into your stipulation. There seems to be a difference of opinion, and perhaps we can straighten it out here in the way of a statement to the Jury. There is evidence in here that there was a conversation that Mr. Gregory was asked to let them go to a certain corner and proceed east.

Mrs. Williams: East, yes.

[545] The Court: Is that the only thing?

Mr. Elrod: No, here is a man, a commanding officer, that the arrest took place, in essence—he ordered the arrest. I think we all agree to that.

Mrs. Williams: Yes.

Mr. Elrod: He is a man that was apprised of the situation here. The questions and the issues, as far as I am concerned are: Was the refusal of the marchers and the other defendants to move and leave the area after asked repeatedly to do so, a situation which would tend to a breach of the peace.

Now, there was one man that made the order, there was one man that made the request, and there was one man that upon refusal to his request and orders placed him under arrest. This man is Commander Pierson. To not give the Jury the benefit of hearing this one man, I think it is taking away something very material from this Jury.

Mrs. Williams: Well, do you want the Jury to decide this case on matters of fact, or on the basis of emotion? I think that if we are to consider—

The Court: Well, from my position, I think without the authority to compel and order the City Attorney or the Defense Attorney, for that matter, to [546] enter into a stipulation, it is my personal feeling that the case of the City will not in any way be prejudiced by entering into the stipulation, and all the facts have been covered by previous witnesses. The Jury would be apprised that this Officer's testimony would substantiate the testimony of—

Mr. Elrod: May I talk to this witness?

He doesn't know what the other witnesses stated.

The Court: Well, I assume you talked to him, and you have talked to the other witnesses, and you are apprised of what has been testified to.

Mr. Elrod: But I am not apprised of what he will stipulate to.

The Court: Well, have a talk with him and see what you can work out in the way of a stipulation.

Put the Jury in the jury room.

Mrs. Williams: Well, if you don't want to stipulate, let's go ahead and get through.

Mr. Elrod: I would like to stipulate. I would like to talk to Commander Pierson.

The Court: If he has got something that has not already—

Is that it? If he will not come up with [547] something unique and different, you will stipulate?

Mr. Elrod: I will see.

The Court: Off the record.

(Whereupon there was an off the record discussion.)

Mr. Elrod: This is our final witness. I am sure direct examination won't last more than five or ten minutes. Through the expediency of time, there are certain matters that Commander Pierson thinks that he did, and I think the Jury is expecting to hear from him about, and I am expecting them to hear what he did.

The Court: Are you going to skirt around the accumulative stuff and go into—if you do, I will limit her cross examination to that.

Mrs. Williams: I will agree that there were spectators, that they built up—

Mr. Elrod: What I want to bring out is what he ordered at 37th and Union, that he ordered additional personnel out—

The Court: Will you limit yourself to that? That will only take a little while. Then, I will hold her back from—

Mr. Elrod: I am sure Mrs. Williams won't go [548] beyond the scope of direct.

(Whereupon, the following proceedings were had in open Court in the presence of the Jury.)

Mr. Elrod: Q. In the expediency of time—Commander, at approximately five minutes to nine, where were you at that particular time?

The Witness: A. I was in the block between 35th and 36th Street on Lowe Avenue.

Q. Were you accompanying the marchers at that time?

A. I was just standing in the middle of the block when the marchers passed me.

Q. Where did the marchers go at that particular time?

A. They went south on Lowe Avenue, past 36th Street.

Q. Were the marchers singing at that time?

A. No, they were not.

Q. When you saw the marchers go south on Lowe Avenue, past 36th Street, what, if anything, did you do at that time?

A. I immediately ran and caught up with the [549] marchers and told the Sergeant to bring additional manpower and to come along for their protection. There was a large crowd on the street, and we had the officers move the crowd to the east side of Lowe Avenue, as the marchers went south on the west side of Lowe Avenue. There was a lot of chanting and hollers at this time.

Q. By the spectators?

A. It was.

Q. Commander, who was present as far as police command personnel was concerned, with you at that time?

A. There was Lieutenant Hougeson from the Task Force and there were a couple of sergeants, and I don't know all of their names, but we had one of the wagons at the corner, and we instructed that personnel to come along with us.

Q. What was Lieutenant Hougeson doing at the time?

A. He used the bullhorn and told the spectators that they would have to move back on the west side of Lowe Avenue.

Q. What were you doing at that time?

A. Telling these officers to keep the crowd back [550] and keep them up on the sidewalk.

Q. Now, at approximately five to ten minutes after nine, where were you at that particular time?

A. I think we were going around from 37th and Lowe to Union Avenue, if I recall, around that time. We approached 37th and Lowe, and there was a large wake being held at McKeon's Funeral Home on the west corner.

Mrs. Williams: I am going to object as being not responsive.

The question was, "Where was he," not who was being waked.

The Court: Mr. Elrod and Mrs. Williams, will you object to a leading question to put him in the place of the conversation?

Mrs. Williams: No, ask him—

The Court: You can lead to put him where you want him.

Mr. Elrod: All right, that was my way—

The Court: Yes, I know.

Mr. Elrod: All right.

Q. Between 35th and 36th Street, Commander, on Union Avenue, did you have occasion to talk to one of the Defendants?

[551] The Witness: A. I did.

Q. At approximately what time of the day or night was this?

A. It would be shortly after nine o'clock.

Q. Now, what did you say to—which Defendant did you talk to?

A. I talked to Dick Gregory.

Q. What did you say to him and what did he say to you?

A. I asked Mr. Gregory to leave the area as I thought it was becoming increasingly dangerous. I asked him if he would, when he reached 35th Street, cooperate and march east out of the district, and I would see that he was escorted safely out.

He said, "We will keep marching, but I don't know what we are going to do."

Q. Commander, approximately how many people—by "people" I mean spectators—how many were present on Union Avenue at the time that you had this conversation?

A. Well, there were many. Five, six, seven hundred people were around. They were just north of Union, around the corner on 35th, there on the west side of the street.

[552] Q. What then did the marchers do, Commander?

A. The marchers marched to 35th Street, they continued east to Lowe Avenue, and I was hoping they would go east, but they didn't. They went back south on Lowe Avenue.

Q. And when was the next time that you had occasion to address yourself to any of the Defendants?

A. The next time was on 35th Street, between Union and Lowe, on the south side of the street, just prior

to the alley. I had a bullhorn, and I asked the marchers to stop.

Q. And what did the marchers do when you asked them to stop?

A. They stopped.

Q. What, if anything, did you say to them?

A. I asked them if they would leave the area. I told them their presence here might incite a riot, because the crowd was unruly. We were having a great deal of difficulty to contain them. I repeated this request for their cooperation, for them to leave, and Dick Gregory went along the marchers and said, "We will not leave; we have not broken any law; we will not resist if we are arrested."

Q. What then did you say after Dick Gregory made [553] these statements?

A. I told them that if they persisted, they would be arrested, but those that wanted to leave could leave, and would they please step up to the alley, and we would escort them safely out of the area.

Q. Did anyone take advantage of this offer?

A. Yes, three or four did.

Q. Then what did—

A. A few rocks and eggs were pelted and I asked the officers to go to the rear of the crowd from where they were thrown, to see if they could apprehend those responsible, as we had done before. I told them to leave the area, and they refused. I told them they were under arrest and to move into the van, and they did, singing "We Shall Overcome".

Q. Commander, approximately how many spectators had built up—strike that.

Approximately what time was this?

A. This was about 9:25, somewhere around there, give or take a few minutes.

Q. How many spectators had built up on Union and Lowe, on 35th Street?

A. Oh, I would say upwards from twelve to fourteen [554] hundred.

Q. Commander, approximately how many police personnel did you have in that immediate vicinity between Union and Lowe, on 35th Street?

A. Close to one hundred police officers.

Q. Commander how many other police personnel did you have under your command in that immediate area?

A. That was it, about one hundred police officers.

Q. Did you have any other men on any of the other corners, still there at that time?

A. No, they were brought over there at this time.

Q. What were the spectators doing at this time, just prior to your talking to the Defendant—the Defendants, herein, and the other marchers, at 9:25 p.m.?

Mrs. Williams: If the Court please, I thought we were going to agree that the spectators were unruly and all of that.

The Court: The spectators were unruly, and things were being thrown.

Mrs. Williams: That is right.

Mr. Elrod: Well—

The Court: Before—for the record, before you rest, it is our understanding that in view of the fact that we shortened this testimony, you will not comment [555] on closing argument, on anything that this witness did not testify to.

Mrs. Williams: No, I will not.

The Court: Very well.

Mr. Elrod: Can I make a statement?

The Court: Well—

Mrs. Williams: Can it be read into the record?

Mr. Elrod: Yes, that he would substantiate—

Mrs. Williams: That he would substantiate—

The Court: Very well, it has been agreed between the attorneys that in addition to the testimony of Commander Pierson, that his testimony—that if the details that have been testified to by other witnesses produced by the City were sought to be brought out, that his testimony would be substantially as the testimony of the other witnesses.

Mr. Elrod: And would corroborate and substantiate it.

The Court: And would corroborate and substantiate the same thing.

Mr. Elrod: I have no further questions.

Thank you.

You may inquire.

[556] *Cross Examination by Mrs. Williams.*

Q. Commander Pierson, at the time that the marchers were singing—

A. Pardon me, I can't hear you.

Q. I am sorry.

At the time that the marchers were singing, at about eight, or thereafter, p.m., did you order their arrest?

Mr. Elrod: Objection. There is no testimony that an arrest was ordered at that time, and it would be irrelevant and material to—

Mrs. Williams: I know there wasn't any testimony that they were arrested at that time, but there was testimony that they were singing. I would like for the

Court to remember—I submit to the Court that these people are charged with being disorderly, not at 35th and Lowe, we have not narrowed ourselves to what the events were at 35th and Union and Lowe, as stated by the complaint, but we have encompassed the entire area.

Now, I would like to try, if I may, by cross examination, to find out what point this Commander considered these Defendants to have become disorderly.

[557] Mr. Elrod: We are objecting to that line.

The Court: The objection is sustained.

Mrs. Williams: Well, I might state this, if the Court please. It is proper cross examination to go into what he did and what he did not do as far as ordering the arrest of these Defendants.

The Court: What he did not do can be a vast and limitless stand.

Mrs. Williams: What he did do.

The Court: What he did do you can go into.

Mrs. Williams: This is what I want to do. Did he order the arrest while they were singing—

The Court: Did he order the arrest at anytime prior to this time? You have covered the whole thing.

Mrs. Williams: All right.

The Court: Very well.

Mrs. Williams: Commander Pierson, prior to the time that you addressed the group of marchers and Defendants over the bullhorn and announced their arrest, did you, at anytime prior, order the arrest of these Defendants, on the 2nd day of August, 1965?

The Witness: A. You will have to repeat that. I am out in left field. Did I do what?

Q. Well, did you order the arrest of these [558] Defendants, or any of the marchers, prior to the hour of 9:20 or 9:25 p.m., on August 2nd, 1965?

A. Thank you.

No, ma'am.

Q. All right. And at the time that you did order or direct their arrest, were these marchers singing?

A. No, ma'am.

Q. Were they making any noise of any kind at the time that you ordered their arrest?

A. No, ma'am.

Q. At the time that you did order their arrest, were the spectators singing, shouting, chanting, throwing eggs, or throwing rocks?

A. Yes, ma'am.

Q. And did you, at that time, order the arrest of the spectators?

Mr. Elrod: Objection.

The Court: Sustained.

Mrs. Williams: Q. You stated that the Defendants ceased to sing approximately around—it was 8:30, is that correct?

The Witness: Yes, ma'am.

Q. Do you know, Commander, whether or not there was any arrangement or agreement on the part of Mr. [559] Gregory or any of the other marchers, with the police department or the Corporation Counsel's officer or any other official of the City of Chicago to cease singing at 8:30?

Mr. Elrod: Objection. We had a similar objection before, Your Honor, and I think the Court instructed that other than by their own volition—

Mrs. Williams: Oh, other than by—

The Court: Put it in that form.

Mrs. Williams: Q. Are you aware of whether any of these marchers ceased to sing, other than by their own volition?

The Witness: A. No, I couldn't say I did.

Q. You couldn't say that you did or did not become aware?

A. I did not, no, ma'am.

Q. Well, Commander, did you order the marchers to stop singing—

Mr. Elrod: Objection.

The Witness: A. No, ma'am.

Mrs. Williams: Q. If the marchers had continued to sing beyond 8:30 p.m., would you have ordered their arrest?

Mr. Elrod: Objection.

[560] The Court: Sustained.

Mrs. Williams: Q. Were the Defendants ordered to be arrested, or did you order the arrest of the Defendants because they had been singing from eight until eight-thirty p.m.—

Mr. Elrod: Objection.

Mrs. Williams: Q. Commander, when you addressed Mr. Gregory on Lowe Street—

Mr. Elrod: Objection.

Mrs. Williams: (Continuing) —on Union Street—I will get it.

When you addressed Mr. Gregory on Union Street, as the marchers were going north, do you recall who, if anyone, was present at the time of that conversation?

The Witness: A. I think you were in the crowd. I don't know if you were standing right there, Mrs. Williams.

Q. As a matter of fact, did you and I not have a conversation at that time?

Mr. Elrod: Objection.

The Court: Sustained.

Mrs. Williams: He said I was there.

Mr. Elrod: Well, I am objecting. There was no—

[561] Mrs. Williams: Judge, he said I was there, and—

The Court: The Jury will disregard the question, "Is it not a fact that you and I had a conversation at that time."

Counsel, in this case, you are Counsel—

Mrs. Williams: Judge, this is really germane to the point.

The Court: You are Counsel in this case. You cannot be called as a witness. You cannot be subject to any cross examination or any inquiry by the City; therefore, I cannot allow you to participate in the trial by—

Mrs. Williams: Can he not say what was said in my presence?

The Court: Yes. You can ask him that. You asked him, "Did you have a conversation with me," and I sustained an objection to it.

Mrs. Williams: Oh, I see what you mean.

The Court: Yes.

Mrs. Williams: I see what you mean.

Q. Commander, at that time, at the time of that conversation—at that conversation on Union Street when you were talking with Mr. Gregory, do you recall—did you state that the marchers—did you tell Mr. [562] Gregory that the marchers could go twice around the block, and then out of the area?

Mr. Elrod: Objection.

The Witness: A. No, ma'am.

Mr. Elrod: It is—

The Court: It has been answered, and I don't think any harm was done.

Mr. Elrod: What was the answer?

The Court: "No, ma'am."

Mr. Elrod: I am sorry. When I am making an objection, do not answer.

Mrs. Williams: Q. Did you—

Judge, may I state this?

The Court: Yes.

Mrs. Williams: Suppose I had not been there, suppose Mr. Gregory had told me what this man said, and he did not recall saying it. Is this Your Honor's ruling that I cannot ask him if he said what my client said he said, and he cannot repeat what he said?

The Court: Yes, you may ask him that. I will permit you to ask that. I refuse to let you go into a conversation.

Mrs. Williams: With me.

The Court: With you, right. Indicate who was [563] present and who was talking to whom, go ahead with it.

Mrs. Williams: All right.

Q. At the time that you had this conversation with Mr. Gregory, did you at that time state to him that he could go around the area any given number of times, and then out of the area?

Mr. Elrod: I am objecting.

The Court: He may answer.

The Witness: A. No, ma'am.

Mrs. Williams: Q. Now, when you had the conversation with Mr. Gregory, on Union Street, did he proceed around 35th Street and back down Lowe and around 36th Street any more times?

Mr. Elrod: It is just technical, but I think the words should be, "After you had the conversation," not when.

The Court: You are talking about the first conversation?

Mrs. Williams: The first.

The Court: You are asking, did they go around the block any more?

Mrs. Williams: One more time.

The Witness: A. Yes, ma'am, they did.

[564] Q. Did you arrest him or order his arrest at that time—

Mr. Elrod: Objection.

The Court: Let her finish.

Mrs. Williams: (Continuing) —after he went around —after your request?

Mr. Elrod: I am objecting to the form.

Mrs. Williams: Q. After your conversation, then.

The Court: My recollection of the testimony is that the conversation took place, and they then went around the block again. Then the arrest was made.

Mrs. Williams: No, here is what happened. The conversation took place—I thought he said that he asked him to leave the area, they walked back around again and down to Union—I mean—yes, Union, and then to 35th Street. Then he arrested them.

Now, I understand him to say that he ordered them out of the area on Union.

Mr. Elrod: No, he asked them to leave.

Mrs. Williams: Yes, he asked them to leave, on Union.

The Court: No, he requested, at that time, according to his testimony, that they go to 35th Street and continue to walk east.

[565] Mrs. Williams: That is right.

Mr. Elrod: Yes.

The Court: All right.

Mrs. Williams: But they did not.

Mr. Elrod: When they didn't—

Mrs. Williams: They came back around one more time, right?

Mr. Elrod: Well—

Mrs. Williams: I mean, is that what he said?

The Court: That is my understanding.

Mr. Elrod: That is my understanding.

Mrs. Williams: This is what he said.

Mr. Elrod: Yes.

Mrs. Williams: This is what I am asking him, is this when he arrested them.

Mr. Elrod: He stated that is when he arrested him.

The Court: All right, ask a question, Mrs. Williams.

Mr. Elrod: Go ahead.

Mrs. Williams: Q. After you had a conversation on Union Street, and the marchers proceeded east on 35th Street and then turned back south on Lowe Street, did you at that time order their arrest?

[566] The Witness: A. No, ma'am.

Q. As they proceeded to 36th Street and back west to Union, did you at that time order their arrest?

A. No, ma'am.

Q. And as they proceeded—were you in—were you accompanying them at that time?

A. Yes, ma'am.

Q. Were other police officers accompanying them—you, under your command, at that time?

A. Yes, ma'am.

Q. And as they proceeded back north on Union to 35th Street, did you arrest the marchers or order their arrest at that time?

A. No, ma'am.

Q. So that when the marchers reached 35th at the alley between Union and Lowe and you had—and you addressed them over the battery powered megaphone, did you at that time have other conversations with Mr. Gregory, not by way of the battery powered megaphone?

A. I don't recall. I do not think so.

Q. Do you recall, Commander, where Mr. Gregory was just prior to the time that you announced the [567] arrest over the battery powered megaphone?

A. Are you talking about when I requested that they leave, five times, or when I ordered them to be arrested?

Q. You requested them to leave five times?

A. Yes, ma'am, I did.

Q. Over the battery powered megaphone?

A. Yes, ma'am.

Q. All right, sir. Will you give us, as near as you can remember, the words that you used or the, you know, the general expressions that you used, in the five times that you made this request?

Mr. Elrod: If Your Honor please, this witness has testified what he said, but it has been further stipulated—

Mrs. Williams: Not five times.

Mr. Elrod: (Continuing) It was further stipulated that this witness would substantiate and corroborate the testimony of the other witnesses.

Mrs. Williams: But we didn't—

The Court: I don't think—

Mrs. Williams: The other people said three. Nobody said five.

The Court: We will shorten it up.

[568] Go to it, sir.

Mrs. Williams: Q. Would you give us, or explain to us what, in essence you said, on the five occasions that you addressed the group over the megaphone?

The Witness: A. Yes, ma'am, I asked them if they would leave, that I felt their presence could create a riot or cause riotous conditions. I don't know the exact phraseology, but it was similar to that. I repeated this,

and I told them if they would leave, that we would give them an escort out of the area. I did not order their arrest until the sixth time when Mr. Gregory, right after the first time, said to the group—he went up and down and addressed them and said, "We will not leave—"

Q. Pardon me. Let me ask you a question before you get to that point of what Mr. Gregory said.

I am interested in what you said. You said "The sixth time that I addressed them," correct?

A. The fifth or sixth time, yes, ma'am.

Q. All right, sir. Now then, in the five times that you requested them to leave, did you, in essence, say, "Your presence could cause a riot"?

A. Yes, ma'am, it was causing a condition that could precipitate a riot.

[569] Q. Yes, sir—

A. Or words to that effect.

Q. Yes. Now, the sixth time, what did you, in essence, say?

A. After the three people left?

Q. No, sir, the sixth time, what did you say, Commander, if you can remember?

A. "If you do not leave—" No. "I am ordering your arrest, if you do not leave." Something similar to that.

Q. All right—

A. Then I ordered their arrest.

Q. After the sixth request?

A. It might be the fifth or sixth. I am not positive.

Q. Well, I am sorry, Commander, but if you aren't positive, could it have been three times that you made the request?

A. No, ma'am.

Mr. Elrod: I am objecting, Your Honor.

The Court: Overruled. He answered.

Mr. Elrod: Are you through?

Mrs. Williams: No, I am not through. I just wanted to get out of your way.

[570] Mr. Elrod: That's all right.

Mrs. Williams: Q. Commander, did you, at anytime on August 2nd, 1965, just subsequent to the arrest of these Defendants, state that you arrested the cause and not the mob?

The Witness: A. No, ma'am.

Mr. Elrod: Objection.

The Court: Sustained. The Jury will disregard the question and answer.

The Witness: A. I was misquoted.

Mrs. Williams: I have no further questions.

Redirect Examination by Mr. Elrod.

Q. Commander, at the time you first addressed Mr. Gregory, between 35th and 36th on Union, did you—who did you observe at that time, at that conversation?

Mrs. Williams: Objection as being asked and answered.

Mr. Elrod: This is redirect, Your Honor. I can bring out additional points in that regard.

The Court: What is the materiality of it?

Mr. Elrod: That there were other people that their presence, perhaps, could further substantiate what was said.

[571] Mrs. Williams: If the Court please—

The Court: I will sustain the objection.

Mrs. Williams: These type of questions are only for the purpose of leading the witness into remembering that he made—

The Court: I am not going to—

Mr. Elrod: He asks me a question and I am answering.

The Court: But you—

Mrs. Williams: You answered it loud enough that the witness can hear you. That is what I am objecting to.

Mr. Elrod: I have no further questions.

The Court: Very well, you may step down.

(Witness excused.)

The Court: Ladies and gentlemen of the Jury. I wish to again admonish you not to discuss this case among yourselves or allow anyone to discuss it with you. There is a possibility that there will be some publicity given to this trial or to some of the parties to this trial, and to the extent that it is possible, I would advise you to avoid looking at newspaper accounts or news broadcasts on the radio or on television.

[575] • • •

Mr. Elrod: If Your Honor please, at this time I would like to state to the Court and to the Jury that the City rests its case and we have no further witnesses. We close our proof and that is our case-in-chief.

Plaintiff Rests.

The Court: Very well.

Mrs. Williams: If the Court please, at this time, on behalf of the Defendants, I would like to make a motion and be heard outside the presence of the Jury.

The Court: Very well, the Jury will retire to the Jury room.

(Whereupon, the following proceedings were had outside the presence of the Jury.)

Mrs. Williams: May it please the Court, on behalf of the Defendants, at this time, I wish to make a motion for a directed verdict. My reasons therefore are this:

Number one, that Chapter 193 of the City Code of Chicago, specifically known as 193-1 The City Peace and Welfare Chapter or the Disorderly Conduct Section is unconstitutional and that it is vague, general, and it does not apprise the Defendants of the specific offense with which they [576] are charged in this Complaint to have violated. I might state further that the Defendants are also charged with violating Section 193-1, separate portions of 193-1, and that number one, they did make or assist in making an improper noise, riot, disturbance, breach of the peace, or diversion tending to a breach of the peace in the limits of the City. I am specifically directing myself to that section of 193-1 which states, "a diversion tending to a breach of the peace," and I cite, in support of our contention that this portion of the ordinance is vague, indefinite, and therefore unconstitutional. In the Terminiello versus Chicago Case 337 U.S. 2, a 1948 case, the opinion was rendered by Justice Douglas and he stated that, in essence, this portion of the ordinance was, in fact, general. It did not, in fact, give the Defendant an opportunity to know beforehand, which is prescribed by law, with a degree of definiteness that particular defense with which he must come into court and answer.

Also, if the Court please, joined in this is the second paragraph of the Complaint of which these Defendants have been brought into Court and deals, or the second count, rather, and it deals with the Defendants gathering in a crowd—body or [577] for an unlawful purpose or for any purpose to the annoyance or disturbance of other persons, and it is respectfully submitted to Your Honor that this, again, is a portion of this ordinance which is vague, indefinte, and does not apprise sufficiently the

Defendants of what they did or what they must answer for in this Court.

Again, I cite the Terminiello Case at 337 U.S. 2nd, and the opinion rendered therein by Justice Douglas.

Further in support of the motion for a directed verdict, I would like to state this: That taking everything that the City's witnesses has said as true, we contend that the City has failed to show that these Defendants did, in any general way aid—make or aid in making an improper noise, riot, disturbance, breach of the peace, or a diversion tending to a breach of the peace.

Without going into detail on each of the witnesses, the police officers who were here—I would like to generalize by stating that, almost without exception, it was shown by the police officers that these Defendants, when they were on 35th Street on August 2nd, 1965, at or about the hour of 9:20 or [578] 9:25 p.m., between Lowe and Union Street, did not make or aid in making a loud noise or riot or disturbance or breach of the peace. They were not singing, they were not chanting or shouting, nor did they, by their mere presence, create a diversion tending to a breach of the peace, because from the evidence taken in its best light, all of the evidence has shown that these Defendants did, at the time and place charged in this complaint, remain standing where they were without making any noise, and did not agree, in answer to a request by a police officer, to leave the area.

I submit to Your Honor that the right of these Defendants to be on a public sidewalk in the City of Chicago is constitutionally protected by the United States Constitution, as well as the Illinois Constitution, and that this statute or this ordinance cannot contravene or

contradict that right, whittle away that right, take away that right, regardless of what it attempts to do. If this ordinance attempts to take away from these Defendants the right to freedom of assembly, the right to peacefully picket, protest, seek redress of their grievances, then that fact, in and of itself, without the vagueness, without the indefiniteness, without the generality, would make [579] that ordinance or that portion of this ordinance unconstitutional.

Further, I would like to state in support of these Defendants, and in support of this motion, that at no time were these Defendants charged with failing to obey the orders of a police officer or interfering with a police officer in the exercise of his duties and functions. They were only charged with this disorderly conduct offense of creating a diversion tending to a breach of the peace, and I submit to Your Honor that as a matter of law and in light of the Wallace versus Alabama decision, Cox versus Louisiana decision, these Defendants' rights to peacefully picket, to seek legal redress from their government, as granted to them by the first and fourteenth amendments of the United States Constitution, and approximately—and which is granted to them under the Illinois State Constitution in Article II, Section 4, is far superior to the rights or the likes or dislikes of any spectators or neighbors who may have been present in the area of 35th Street between Lowe and Union at the time that these Defendants were arrested.

I further submit to Your Honor, in support [580] of this motion, that it is unbelievable that the City Counsel in enacting this ordinance intended that a person would be guilty of violating this ordinance merely because someone else was motivated to commit a crime. I sub-

mit that all of the evidence on the part of the prosecution, taken in its best light, clearly shows that these Defendants committed no crime, but that the spectators did commit the crime or did commit an offense. I do not—to reiterate, I do not believe that it was the intent of the City Counsel to state that a person or persons who are in the presence of other persons who commit a crime or an offense are guilty of disorderly conduct.

For this reason, I respectfully request that a motion for a directed verdict be allowed. May it please the Court, I ask that all previous statements in support of our argument regarding the Defendants' Constitutional rights be incorporated in this motion for a directed verdict, and be made a part hereof.

Mr. Elrod: If Your Honor please, I similarly request that the previous argument made in support of the various charges or motions of the Plaintiff, the City of Chicago, and in rebuttal to the Defendants' argument, be incorporated herein and made a part [581] hereof as rebuttal of Counsel's statement in support of her motion for a directed verdict, at the close of the Plaintiff's case.

Further, I would like to state that the ordinance under which these Defendants are charged, Section 193-1 of the Municipal Code of the City of Chicago, as amended, is not vague and indefinite and general. It does, in fact, sufficiently apprise the Defendants as to the quasi crime or the violation that they have committed. I would like to cite to Your Honor the case of the City of Chicago versus Lewis, reported in 28 Illinois Appellate 2nd, at page 189. That case—well, the Municipal Court of Chicago found defendant guilty of violating the disorderly conduct ordinance of the City of Chicago and

imposed a fine of ten dollars. A motion to vacate the judgment was made by defendant and denied. From that order, defendant appealed. The principal issue presented is whether the complaint charges the offense with the particularity required in cases of this kind. The complaint enumerates all of the offenses set forth in the ordinance but the particular charge against defendant is indicated by an "X". This charges that defendant, on September 2nd, 1959, at the City of [582] Chicago did then and there violate the Municipal Code of the City of Chicago to wit: Did make or aid in making an improper noise, riot, disturbance, breach of the peace or diversion tending to a breach of the peace within the limits of the City and, "dot, dot, dot, in violation of Chapter 193, subsection one of the Municipal Code of the City of Chicago."

The Court therein, after stating that the rules of civil procedure and civil practice shall apply, states that the complaint does adequately apprise the defendants of the charge. It further states—it cites another case, City of Chicago versus Dryier, 325 Illinois Appellate 258, wherein leave to appeal was denied to the same Court. It states in that particular case, the Court approved that type of complaint saying it took judicial notice of the great volume of business handled by the Municipal Court of Chicago, and that printed forms were necessary in order to handle its business expeditiously That opinion was rendered in 1945. Since then, such prosecutions have multiplied and hundreds of cases are disposed of, daily. The only difference between the complaint in the instant case, the Lewis case, and the one used in the Dryier case, is that this— [583] instead of striking out with an "X" that not charged, an "X" is placed in

front of the violation alleged. I submit to Your Honor that the complaint as to the defendants in the case at bar are the same type of complaints that were used in the Lewis Case, which received approval by this Court.

I might further state that if the Complaints were inadequate to inform Defendants or their Counsel that there are various procedures as provided in the Civil Practice Act for motions for bills of particulars, motions, so that the complaint would be made more specific. The complaints were filed on August 2nd, 1965, and this case commenced on trial November—approximately November 1, 1965. Today is now November 11, 1965. There still has been no motion to make the charges more specific or for a bill of particulars. The City is willing, and was willing, at all times to comply with any requests of the Defendant or its counsel in that regard. I feel that the Lewis case adequately covers this particular argument. I feel that the charges are sufficient, that the charges against these defendants in that they made or aided in making an improper noise, riot, disturbance, breach of the peace or diversion tending to a breach of the peace [584] are well defined terms. The Terminiello Case nowhere sets forth the vagueness and indefiniteness of that ordinance, and there, too, in the Terminiello Case we were concerned with the—with 193-1 of the Municipal Code of the City of Chicago.

The Court, in the Terminiello Case, which Counsel has cited, stated that the constitution, the First Amendment thereof—I am talking about the United States Constitution—protecting free speech, protects the particular defendant, Terminiello from being arrested under that ordinance because what he was doing was talking, and that the words that he was using may cause dispute and may

be fighting words, but words, of and in themselves are not prosecutable and are protected by the Constitution. There are numerous cases which I have previously referred to, which states that picketing, gesturing in crowds and bodies, demonstrating, marching, having processions are not subject to the same protection as speech.

I might add, that the cases that Counsel has cited, Cox versus Louisiana, Wallace versus Alabama and other cases that have been cited, not necessarily today, Edwards versus South Carolina, cases that I have cited, Hughes versus the Superior [585] Court of California, Teamsters Union versus Vogt, all bring out this point very distinctly, that picketing invites action, and is therefore not subject to the same protection as free speech, as was cited in the Terminiello Case.

Now, Counsel states that they have rights, that the Defendants herein have rights to be on a public sidewalk and that that is Constitutionally protected. There are certain rights that are constitutionally protected, but still are subject to control, subject to statutory or ordinance control, and all of these cases have brought that point forward. In the instant case, although there is a basic Constitutional protection, as there is in any criminal charge—no state or city or municipality can file a complaint for no reason at all. I mean, there are Constitutional rights, but this constitutional protection is subject to the safeguards of the individual community; in instance, the City of Chicago. The City of Chicago has had, in effect, 193-1 as to diversions tending to a breach of the peace and had in effect 193-1 as to collecting in a crowd or body for an unlawful purpose or any purpose to the annoyance or disturbance of other persons. The facts [586] in this case, taken in any light, and they must be

taken in the best light for the Plaintiff, but taken in any light, clearly reveals what has happened. Counsel, in her opening argument stated what she was going to show. The City more or less followed Counsel's opening argument. The City has shown that these Defendants were present on August 2nd, that on August 2nd, while they were there, they came there singing, and like the Pied Piper of Hamlin, crowds came out. They started at twenty-five to thirty. It built up to—there was testimony that there was anywhere from twelve hundred to two thousand, or thousands, as one witness stated. Yes, this crowd was unruly, yes, this crowd was noisy, yes, this crowd was boisterous, yes, this crowd was making police officers fifteen years on the force apprehensive, this is the evidence.

Some one man was charged with the responsibility. He was the Commander of the Ninth District in which this was located. There was Commander Howard Pierson, he was charged with the responsibility of maintaining the peace and safety of all people in this district including the marchers. They were in this district at this time. He had a decision to make. His decision was to ask for the cooperation [587] first of Dick Gregory, assuming that Dick Gregory, being at the head of the line could influence the other people in that line, he asked him to leave the area because it was a dangerous situation. Dick Gregory did not respond that he was not leaving, he did not respond that he was leaving, but he continued. He said, "We will continue marching," and they marched to 35th Street, the route requested by Commander Pierson, that they go east on 35th Street when they reach Lowe. They did not do that. The crowd continued to build up, and by the time they reached

35th Street again, at Union, there was between fourteen hundred and two thousand people.

This was an unruly crowd, eggs were being thrown, rocks were being thrown, epithets were being stated, people were breaking out of police lines, traffic had to be stopped. Again Commander Pierson requested, not once, not twice, but Commander Pierson said he asked him five or six times, but it doesn't matter how many times. Other witnesses said three or four times. He asked the whole group, this time by way of a bullhorn to please leave the area, "Your presence is creating a dangerous situation, your presence is creating a riotous situation, your continued [588] presence is going to precipitate a riot," language to this effect. What happened? They refused to move. Not only did they refuse to move, but one of the Defendants told them not to move.

Now, if there was ever a situation where there was a diversion or condition that would tend to a breach of the peace, after being warned and asked and conjoled and pleaded to by the Commander of the Ninth District, who was in uniform—that was testified to by Lieutenant Hougeson. He was in uniform, identifiable, and there was no contention that they did not know who he was. They refused to leave. Now, if Your Honor please, it was stipulated to that there is a section of the Municipal Code known as 36-31 which requires parades or processions or open air meetings to have a permit. It has been stipulated that no application for a permit was made, or no permit, in fact, was given. If Your Honor please, at one point, at the point where the marchers, these defendants refused to leave this area, at that point, what were they violating?

Well, they were gathered in a crowd or body for the purpose of continuing to march. Their refusal to leave

was indicative of that, so they were going to [589] continue their crowd, their gathering in a crowd or body for this unlawful purpose, for marching contrary to 36-31. They were going to continue in a crowd or body for the purpose of annoying or disturbing other persons.

Now, I am not asking the Court to interpret "annoying or disturbing other persons," by saying that if someone is Negro and they sit down next to someone on a bus, that might annoy somebody. Annoyance and disturbance must be tested in the light and facts of what existed on August 2nd, 1965.

I say their continued presence here was the collection in a crowd or body, both for an unlawful purpose and for the purpose of annoyance and disturbance of other persons.

Now, Counsel states that they are not charged with failure to obey a police officer. I call your attention to 11-33 of the Municipal Code of the City of Chicago, and state that it states: "Any person who shall resist any officer of the police department in the discharge of his duties or who shall, in any way interfere or hinder the discharge of his duties as a police officer, et cetera, et cetera," I submit further that their failure to [590] leave was resisting and interfering with Commander Pierson in the discharge of his duties and their continued collection in a crowd or body for the purpose of interfering or for the purpose of resisting or interfering with Commander Pierson in the performance of his duties was a further unlawful purpose.

If Your Honor please, Counsel states that the evidence shows that the Defendants committed no crime. That is begging the question. The evidence shows that at approximately 9:25 p.m., to 9:30 p.m., when requested

to leave and did not leave, that they committed crimes. They committed the crime of a diversion tending to a breach of the peace. They committed the crime of collecting in a crowd or body for an unlawful purpose or for the purpose of the disturbance and annoyance of other persons. What other people were doing, what the neighbors were doing, what the spectators were doing, is of no pertinent value. Whether they were arrested or not is of no pertinent value. What is important, was that the situation that was there—was there a conduct on the part of these defendants which would tend to a breach of the peace. And I think, taking the evidence in any way that you can take this evidence, [591] is that a riot was about to be precipitated. The Commander in being a good, well—extremely well qualified police officer, stipulated to, again, had the authority to ask and then to order their removal. They did not move. In fact, one of the Defendants ordered them not to move. I say this is a violation, and this is what the Plaintiff's evidence does show.

Again, I am using these arguments and incorporating any and all other arguments made that apply hereto on this case.

Mrs. Williams: Briefly, I would like to state this. In response to the unlawful purpose portion of the City's argument, it was not necessary, under the Constitution of the United States of America nor the Constitution of the State of Illinois for these defendants to seek a permit to exercise a constitutional right, to assemble, to picket in a peaceful manner, or to seek redress of a grievance of their government. It is not disputed that the Mayor of the City of Chicago is the Mayor twenty-four hours a day, and that these Defend-

ants have a constitutional right and a guarantee to seek legal or to seek strict legal—to seek redress of their grievances from their government, their government in this case being [592] centralized in the figure and the person of our fine Mayor of the City of Chicago.

Also, on the second point of unlawful purpose, when the City maintains or contends that the unlawful purpose for which these Defendants were assembled or gathered was the purpose of disobeying the orders of Commander Pierson, this is, in fact, begging the question, because the City's witnesses testified, and the City attempted to prove that the purpose of the Defendants' march and demonstration on this day was to apprise the Mayor of the desire on the part of some of these Defendants who carried picket signs to correct what they contend is segregation in the city schools of Chicago, secondary education inasfar as the Negro children of the City of Chicago are concerned. I submit to Your Honor this is not an unlawful purpose.

Now, to direct myself to the exact statement of Counsel, that when these Defendants stopped on 35th Street between Lowe and Union and refused to obey the request of Commander Pierson that they remove themselves from a city street, it was not unlawful for these defendants to determine that their Constitutional right to peacefully assemble, to [593] peacefully protest, to seek legal redress from their government superseded and went far beyond the right of Commander Pierson to take away from them that Constitutional guarantee.

I further submit that no right given to a Defendant, a citizen of the United States of America and the State of Illinois, can be decided to be unlawful at the whimsey of anyone, be he a commander, be he a sergeant, be he

a patrolman for the Chicago police force, no one can take away the inalienable rights given to a defendant or given to a citizen of the United States of America as long as that person remains a citizen. These rights clothe him, from his birth, and stay with him until the day of his death, and it cannot be taken away. It cannot be determined that a Constitutional guarantee or a Constitutional right, or the exercise of the Constitutional right is unlawful.

Mr. Elrod: If Your Honor please, the Mayor of the City of Chicago lives at 3536 South Lowe Avenue. This is his private residence. It is not like in New York, where the City of New York owns a particular household. The Defendants, even so, did not bother to picket in front of the Mayor's house. The evidence [594] clearly shows that they marched in an area bounded by 36th and Union—35th Street, 36th Street, Union and Lowe, one square block. At one point they went to a block bounded by 37th, 36th, Union and Lowe. Counsel nowhere contends that the Mayor lives or was at McKeon's Funeral Home, that he was at any establishment along Union Avenue, along 35th Street or 36th Street, so that contention that people have a right to petition or apply for grievances to their government, I think is without merit.

Furthermore, the evidence shows that—strike "the evidence shows".

Furthermore there is a place of business for the city government at 121 North La Salle Street, known as City Hall. At anytime the Defendants could petition for their grievances, no matter what their grievances are, at that particular place. It has been testified to that this area is primarily a residential area. There are some

business, some local service businesses, retail businesses located on at least some of the corners, but primarily this is a residential area.

Again, the Constitutional safeguard nowhere permits picketing—I am not talking about free [595] speech, but picketing or gathering in a crowd or body or a procession or a parade in what is primarily in a residential area, for whatever purpose. There is no specific permission in the Constitution in that regard. If there are ordinances and statutes that can be interpreted at a time when riots are about to precipitate, those ordinances take primary effect.

I would like to cite Your Honor the City of Chicago versus Lambert, which is at 37 Illinois Appellate 2nd, 151, and the City of Chicago versus Williams, 45 Illinois Appellate 2nd, 327, wherein the Court states in the Lambert Case at 160, there actions were—let's see, the law does not contemplate standing by until there is a riot. That is the City of Chicago versus Williams. It is cited again in the Lambert Case. The peace of the people is a fundamental function of our democracy. It goes on to say—well, the Lambert Case, for example, is a case where the actions of numerous, four or five we will say, of the Defendants were dressed in garb of the Nazi uniform at the State and Lake Theatre, which is at State and Lake. Their actions were, well they were talking about Sammy Davis being a kosher coon. It was highly inflammatory language that was used by [596] the Nazis that were marching as to the Negroes and to the Jewish people, but they were orderly, they were quiet, they were not yelling, they were not shouting. I am talking about the Defendants. Their actions incited various counter actions. Their actions—I am talking about Lambert

and his co-defendants. They incited people to a near riot and the near rioters were not arrested but Lambert and his co-defendants were arrested.

In the Williams case, there was a picket in front of the Chicago Defender, a newspaper published in the City of Chicago. There was a line of pickets walking in front of the building. Three of these picketers or three of these people that were formerly pickets walked outside of this line of march and the police said, "If you are going to stay here, you are going to have to march in that line of march."

They said, "We can march anywhere we want."

They said, "If you are going to picket, you have got to walk in this line of march."

Upon their refusal to leave the sidewalk where they were walking, they were arrested because their conduct was a diversion tending to a breach of the peace.

[597] Now, I want to point out that the Chicago Defender is located, the plant or the headquarters where they were picketing is located on Michigan Avenue. It is not a residential area. The Court, in that case, stated that there might be some people who could not get by, that there might be some counter action. This was conjecture on the part of the Illinois Appellate Court. In this case, the subject case, there was no conjecture as to what the crowd was doing, what the counter action was prevailing, but in the Williams Case there was conjecture, and the Court said that their action was a diversion tending to a breach of the peace. They were merely walking on the sidewalk.

I think here where you have an explosive situation and you have a piece of dynamite with the detonator ready to go off, that the action on the part of the police

and the complaints filed against these defendants are extremely proper.

The Court: The motion will be denied.

I will make an observation, because it might arise later on. I don't believe that the Constitution protects against an exercise, a proper exercise of police power under these circumstances, [598] assuming these facts that they have presented to be true, that there was a near riotous situation present which may beyond—I will not take notice of this and instruct this Jury that there were near riotous conditions, but if they believe the conditions were near riotous, then the actions of Commander Pierson were a proper exercise of police power. It is the same as it is proper to dynamite person's home where a fire might annihilate a whole city. There are certain situations where a police power predominates.

Mrs. Williams: All right. Further, if we can have the instruction that if they believe the conditions or the near riotous conditions could have been controlled by the police department, then—and were not controlled, then the arrest of these defendants was an improper application of—

The Court: If you wish to prepare an instruction in that vein, I will have to rule on it when you submit it.

Mrs. Williams: It didn't occur to me—

The Court: I don't want to prejudge it, but the sanctity of the home is the most guarded of all rights in the public mind. It is not constitutionally protected in situations like in the Chicago fire. If [599] it had been possible to dynamite a whole block to protect a city, it would not have been improper. I am using this as an extreme analogy of the right to exercise police power to the extent that it would prevent a riot.

Mrs. Williams: May I state this, and I did not in my motion, but I would like to raise this point:

This is an unequal protection or application of the law in violation of the Constitution, as the Court would or should take judicial notice of the fact that there has been other demonstrations in front of the Mayor's home within the last few months, particularly the burning tree club.

Mr. Elrod: If this is going into the record—

The Court: We are going beyond—

Mrs. Williams: I ask the Court to take judicial notice—

Mr. Elrod: After August 2nd, on my offer of proof I couldn't bring anything in, when I was making an offer of proof to this Court to show that the marchers have demonstrated in front of City Hall. I was not allowed—

The Court: Anything that may or may not have happened after August 2nd has no—

[600] Mrs. Williams: All I am saying is that there is an unequal application of the law. Even if the Court will not take judicial notice of this, between these demonstrators and the so-called spectators who were allowed to assemble, to build up, to boil over, to come to a state which was considered by the Commander to be riotous, the same way that these Defendants were charged with assembling in a crowd or body for an unlawful purpose, so could the spectators who stood along the street, whom the officers saw come out into the street, even to the point where they were pushed back into the crowd, physically, with force, so could have been arrested.

The spectators gathered for the purpose of—or for an unlawful purpose as exhibited in more ways than one. First by shouting, chanting, singing, the inflamma-

tory signs which is the situation in the Lambert Case and the reason why the Court said that—

The Court: Also the evidence of language, that in itself would be grounds for arrest.

Mrs. Williams: For inflammatory language.

The Court: Yes.

Mrs. Williams: That puts the spectators right on line with the City versus Lambert Case, Judge, and [601] I might state—

The Court: It is the position of the Court that the fact that others may have been guilty of offenses as may or may not have been arrested, is of no probative value at all.

Mrs. Williams: It is not unequal protection of the law?

The Court: No. If you want to make this part of your case, and I think you did on your offer of proof, you can present it on appeal, but I will not allow it in this record, and I will not allow you to argue it.

Mr. Elrod: May I respond?

The Court: This is beyond the motion for a directed verdict. I don't want to take advantage of the Defendants or the City, and I don't—I hesitate to interject some of my rulings in that I might suggest something to you as attorney for the Defendants or attorney for the City that puts me in an adversary position, where I don't want to be.

Mrs. Williams: I appreciate that and—off the record.

(Whereupon, there was an off the record discussion.)

[602] (Whereupon, the following proceedings were had in open court, in the presence of the Jury.)

The Clerk: He has not been sworn.

Raise your right hand.

(Whereupon, the witness was duly sworn by the Clerk.)

DICK GREGORY, called as a witness herein, by and on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mrs. Williams.

Q. Will you keep your voice up so that the last Juror on this end can hear you.

What is your name, please?

A. Dick Gregory.

Q. And where do you live, Mr. Gregory?

A. 1451 East 55th Street.

Q. That is in Chicago, Illinois?

A. Chicago, right.

Q. What is your business or occupation?

A. Entertainer, author, and lecturer.

[603] Q. Are you married or single?

A. Married.

Q. Do you have any children?

A. Five.

Q. Have you had any previous military service?

A. The armed forces.

Q. And what was that service, the length of service?

A. Two years.

Q. And were you honorably discharged?

A. Yes.

Q. Now, calling your attention to on or about the 2nd day of August, 1965, at or about the hour of four, p.m., what if anything were you doing at that time?

A. I was at Grant Park assembling the marchers.

Q. At that time, did you have occasion to address the marchers?

A. Yes, I spoke to the marchers.

Q. Who was present at that time, if you remember?

A. Frank Ditto, Jerry Herman, and the rest of the marchers.

Q. What did—

A. I never tried to check out anyone who was there other than who was handling the line, which was Frank [604] and Jerry.

Q. What, if anything, did you say to these assembled marchers?

A. Well, I spoke to them every day. It would be difficult for me to remember what was said. We have rallys every day before we leave—

Mr. Elrod: I am objecting to the nonresponsiveness.

The Court: Sustained.

Mrs. Williams: Q. And after the address, what, if anything, occurred?

The Witness: A. We assembled and left and marched to City Hall and we marched around City Hall and we marched back over to State Street.

Q. And where, if anyplace, did you go after arriving at State Street?

A. We turned right and marched south on State Street. The first break we had—we take breaks every so often, the first break was at 29th and State Street at a filling station.

Q. Approximately what time of the day or night was that?

A. Well I could guess that it would have been a little bit before seven.

Q. Did anything unusual occur at that time and at [605] that place?

Mr. Elrod: I am objecting to what occurred and to what the witness guesses was about seven o'clock, at 29th and State.

The Court: The objection to the guess is untimely and the question was answered before the objection was made.

Mr. Elrod: I am objecting to—

The Court: (Interposing) —as to the generality. I am going to let him answer and you can make an objection when he answers. "Unusual" is a pretty broad term.

Mrs. Williams: You may answer.

The Court: You may answer.

The Witness: A. What happened at the filling station—

Mrs. Williams: Q. Would you keep your voice up, please?

The Witness: A. (Continuing) —where we had the break, Attorney Chambers, the Corporation Counsel, spoke to me there and he asked where we were going.

Mr. Elrod: After "Attorney Chambers spoke to me," if that were unusual that would be responsive. I am objecting to the narrative thereafter.

[606] The Court: I will let him continue for the moment.

Mrs. Williams: Q. All right. Who was present at the time Attorney Chambers spoke to you at 29th and State Street, at or about the hour of 7:00 p.m.?

The Witness: A. Frank Ditto and Jerry Herman and you.

Q. And what, if anything did Attorney Chambers say to you?

Mr. Elrod: Objection.

The Court: Sustained.

Mrs. Williams: Q. Were there any police officers present at this time?

The Witness: A. Present at the—

Mr. Elrod: Objection.

The Witness: (Continuing) Not at the filling station. Not present at—

Mr. Elrod: Objection.

The Court: He may answer.

The Witness: (Continuing) —present at the filling station, because when we would take a break, they would take a break, too, so they were all present in the filling station, but not at the particular conversation.

[607] Mrs. Williams: Now, what, if anything, did you do as a result of the conversation you had with Attorney Chambers?

Mr. Elrod: Objection as to what this Defendant—this witness did as a result of any conversation which is not in evidence.

Mrs. Williams: Well, if the Court please, it is in evidence that he spoke to—that Attorney Chambers spoke to him, and I suggest that the question is proper because I said, "What, if anything". It does not assume that anything was done, but, "Did you do something?"

Mr. Elrod: "As a result," is the objective as to what he did because of this conversation, and not knowing what the conversation was.

The Court: He may testify as to what he did after he had the conversation, but not to what was as a result of it, directly.

Mrs. Williams: Q. What, if anything, did you do after the conversation with Attorney Chambers?

The Witness: A. I went to the rest of the marchers and explained the conversation that we had had with him.

Q. What, if anything, did you say, as near as you [608] can remember—

Mr. Elrod: Objection.

The Court: Sustained.

If you want to make a record on this point, Mrs. Williams—

Mrs. Williams: Yes, sir.

(Whereupon, the following proceedings were had in chambers, outside the hearing of the Jury.)

The Court: If you want to make an offer of proof—

Mrs. Williams: All right, sir. If the Court please—off the record.

(Whereupon, there was an off the record discussion.)

The Court: I anticipate that you intend to prove that there was an agreement between Mr. Chambers and the police officers or somebody, to permit this parade or march to continue, subject to certain conditions, and I will have to rule, as a matter of law, that no one other than the City Counsel has any power or authority to abrogate or negate or nullify a city ordinance.

Mrs. Williams: No, sir. What I wanted to state [609] is this. Not there was merely an agreement, but that there was a conversation. At that time, the decision was made by Mr. Gregory that the marchers would cease to sing at a given time as a result of a conversation that he had with Chambers.

Mr. Elrod: I submit that that would be irrelevant and immaterial as to why he stopped singing, but the record is clear and I take it that Mr. Gregory will so testify that they had stopped singing somewhere between eight and eight-thirty.

The Court: I am posed with another problem, too. It is apparent to me that this Jury has an indication that there may have been an agreement of some kind or some nature, by virtue of the fact that objections were put and objections were sustained as to why they stopped singing, et cetera, et cetera, and it may be necessary to instruct them that the police department or Corporation Counsel has no authority to negate or excuse the obedience to a city ordinance.

Mrs Williams: But, if the Court please, it has never been contended that the singing, the mere singing by these Defendants or the chanting was a breach of the ordinance. It has never been contended by the City, so it could not be—

[610] The Court: I can't agree with you there, because the language of their complaint—they have proved a loud noise prior to 8:20, and their complaint alleges disorderly conduct that would encompass this conduct, and the time is not limited to 9:20 or 9:15, although the evidence seems to point to a specific hour. As far as the record is concerned, the complaint says, "the 2nd day of August".

Mrs. Williams: If the Court please, would I be allowed to show that this was an effort on the part of the marchers to comply with the rules of the City or the requests of the City and the City Officials, regardless of their right to allow a violation of an ordinance. This would tend to show that these defendants were not intending to collect for an unlawful purpose or purposes.

Mr. Elrod: Well, if Your Honor please, intent is not the gist of this complaint.

Mrs. Williams: The intent must be the gist of this complaint. You must intend to do these things.

Mr. Elrod: No, this is not a criminal charge. I don't think we have to prove that.

The Court: Well, I am faced with a problem now of whether I should let you go into the agreement [611] that existed, or whether it was an annulity or not between whoever talked to Mr. Gregory, and Mr. Gregory. I think you could properly argue, as the evidence now stands, that it is reasonable to assume—it is a reasonable inference that some understanding was reached somewhere along the line, but I don't believe that I can give you the legal sanction to permit an agreement that is a legal nullity, by permitting you to offer as evidence in this case these things.

Mrs. Williams: All right.

The Court: If there is no objection to the question, I would have to remedy this by an instruction, but that is a matter for you attorneys to decide.

Mrs. Williams: Yes.

The Court: Okay.

(Whereupon the following proceedings were had in open Court in the presence of the Jury.)

Mrs. Williams: Q. Mr. Gregory, after the Assistant Corporation Counsel, Mr. Chambers, spoke to you at 29th and State Street, what, if anything, did you do?

Mr. Elrod: I am objecting. That was asked [612] and answered just a question before.

The Court: Well, it may be repetitious. I believe his testimony was that he then spoke to the marchers.

Mrs. Williams: All right.

Q. Then after you spoke to the group, what if anything did you do?

The Witness: A. Well, I talked with you to get your legal advice on the—

Mr. Elrod: I am objecting to the connotation—

The Court: The Jury will disregard the purpose, but it will stand that he talked to you, meaning the attorney for the Defendants.

Mrs. Williams: Q. Then what, if anything, did you do, Mr. Gregory?

The Witness: A. Assembled the marchers and continued the march.

Q. And when you say you continued the march, in what direction was that?

A. Southbound on State Street.

Q. How long did you continue to march southbound on State Street?

A. Until we got to 35th Street.

Q. Then where, if anyplace, did you go?

[613] A. We turned right at 35th Street, and marched west on 35th Street. We stopped again at 35th Street and went north at a filling station.

Q. What, if anything, did you do when you stopped at 35th and Wentworth at that filling station?

A. I assembled the marchers. Before they had their break, I explained to them that I thought there was going to be some arrests—

Mr. Elrod: I am objecting.

Mrs. Williams: Q. Continue.

The Witness: (Continuing) —and that we had agreed that we would not sing—

Mr. Elrod: I am objecting as to any agreement that Mr. Gregory was explaining to the marchers, unless he states who was present, and I further am objecting that it was irrelevant and immaterial as to the issues herein.

The Court: I am going to let him indicate what he said to the marchers. We will strike from the record the fact of the agreement.

Mrs. Williams: Well, Judge, he didn't say with whom he had agreed. He didn't say with whom he had agreed He just said, "We had agreed."

The Court: He may answer. There is nothing I [614] can do at this time. The Jury has heard the substance of the matter.

Go ahead.

Mrs. Williams: That is what he said—

The Court: Go ahead.

Mrs. Williams: All right.

Q. What, in essence, did you say to the marchers?

The Witness: A. That we had agreed that we would quit singing at 8:30.

With reference to the agreement, this was the agreement that we had with the marchers before we left Buckingham Fountain, but due to the conversation we had at 29th Street—

Mr. Elrod: I am objecting as to what this agreement was due to or the cause or reasoning of this agreement. I just don't think it is material or relevant.

Mrs. Williams: If the Court please, this witness, I submit, should be allowed to say what he said to a group at a given place, inasmuch as the other Defendants and he are charged with assembling for an unlawful purpose.

The Court: He may answer.

Mrs. Williams: All right.

[615] Q. Sir, continue.

The Witness: A. (Continuing) Due to the conversation that had been had, I felt there would be some arrests, and we would be safe and quit singing no later than 8:15, and I told each and every marcher this.

At that time, the Lieutenant, of whom I don't know his name, approached me at the filling station and sort of explained the ground rules—

Mr. Elrod: I am going to object to—

The Court: That will be stricken and the Jury will disregard it.

The objection is sustained.

Mrs. Williams: Q. Sir, then what, if anything did you do?

The Witness: A. We lined up and we started marching again, west on 35th Street, and we continued to march until we got to Wallace. I believe Wallace is the street before you get to Lowe. We stopped and straightened up the line and explained to everyone again that we would stop singing at 8:15. Then we continued to march over to 35th Street. We got to 35th and Lowe, and we crossed the street at 35th and Lowe.

[616] We went to the west side of 35th and Lowe, which would be the southwest corner, and we turned left and went south on Lowe.

Q. All right, sir. Now, approximately what time of the day or night was this?

A. Oh, I would say it was between five 'til and five after eight.

Q. Now as you proceeded south on Lowe, what, if anything, did you do at that time?

A. Well, we were marching and singing. I went back through the line to tell everybody just to keep singing and to keep marching, "don't stop and don't answer anyone back, don't worry about anything that is going to be said to you, just keep marching."

"If anyone hits you or anything, try to remember what they look like, but above all means, do not hit them back. Keep the line straight and keep it tight."

Q. Now, would you explain to this Jury and to the Court, what you mean by straightening the line and keeping it tight?

A. In straightening the line, you go back and keep everybody close to the person who is in front of them and keep them directly behind the individual [617] that is in front of him, to make sure that no outsider will slip in your line and create a problem and have the marchers blamed for it, and to watch everybody in front of you.

If someone is struck, pushed, slapped, or spit upon, watch to see if the indiyidual who receives the blow or this bad treatment would react in any way. It would be left to whoever was behind this individual and not the person who did it. This is what we mean by keeping the line straight and keeping it tight.

Q. Now then, upon reaching the corner of 35th and Lowe, what, if anything, did you do in the line and proceeding west—

A. We turned at 36th and Lowe and proceeded west, and we got to an alley. There was a barricade at the alley and officers were standing in front of it. I made the comment to Jerry Herman and Ditto and to Attorney Elrod, did they have the officers there to keep us out of the alley or to keep what was in from coming out upon us. We laughed about it and kept marching until we got to the corner of 36th and Union.

We turned right and headed north. We [618] headed north until we got to 35th and Union, and we headed east on 35th until we got to Lowe. We turned right again and headed south. At this time, the lawn sprinklers had been put on the sidewalk, which meant if we walked through, we would have to either walk through the sprinklers and get wet or go out in the street. It was a decision that had to be made, and the decision was made that we would go out in the street, but as soon

as we got past the area where the water was, we would come back up on the sidewalk, immediately, which we did.

Q. All right. Now, how were the marchers lined up as they walked around this block? Were they in twos, threes, or fours, occupying the entire sidewalk?

A. They were two abreast and it would all depend. If some of the neighborhood people would stand in front of you, we would either go to one side or the other, but we tried to stay as close to the curb in a certain area as we could without stepping on the lawn. Other areas, we tried to stay as close to the houses, without walking on anyone's property, to keep the sidewalk open so anyone could get by without bumping into us, unless they had the direct intention of bumping into us.

[619] Q. Now, upon making this first circle around the block of Lowe and Union, bounded by 35th and 36th Street, how many spectators—strike that.

Did you observe any spectators at the corner of 35th and Lowe as you arrived at that area?

A. Yes.

Q. Approximately how many spectators did you observe?

A. I would say when we first entered the area, on the corner, there were three to four hundred people.

Q. Now, would you say those people were concentrated in one location, or scattered around the area, or just where were these people?

A. On this particular corner, 35th and Lowe, they were just scattered around on the opposite side of the street, but there were people scattered all through the area, people sitting on their porches, people standing on the street, and people on the other side of the street.

When we first entered the largest concentration of

people that you could see, there were people standing directly across the street on 35th [620] and Lowe, on the corner—on the northwest and northeast corners.

Q. Did you observe whether or not these people had anything or any objects in their hands?

A. Yes, some of the people that we passed had banjos and guitars or had signs.

Q. And did you observe—What, if anything did you observe was on these signs?

A. Yes, it was very interesting that we passed the word back in the line, "Look at these signs." Not for what was mainly worded on them, but because of the fact that it was professionally printed to let us know this whole organization was not just a mob that had gathered in the street—

Mr. Elrod: Objection.

The Court: Sustained.

Mr. Elrod: I ask that the Jury be instructed to disregard it.

The Court: The Jury will disregard the witness' conclusion as to the nature of the group as indicated by his language.

Mrs. Williams: Q. What, if anything, did you notice on the signs, the printed words?

The Witness: A. The printed words were, "We love [621] our Mayor," and all the signs were the same size.

Q. Did you see anything else in the hands or in the possession of any of the people in that area, at the time that you immediately arrived in the area?

A. No, I didn't. There were various people in the line—

Mr. Elrod: Objection.

The Court: Sustained.

Mrs. Williams: Q. Now, just prior to entering the area, Mr. Gregory, as you approached the intersection of Wallace at 35th Street, on the southwest—southeast corner, did you notice anything unusual at that particular corner?

Mr. Elrod: Objection to the generality of the question.

The Court: I am going to let him answer.

The Witness: A. Yes, sir, at that corner it seemed to be a school playground with a fence. There was a lot of adults and kids inside the school playground, and right down from that was a police station.

As we passed by, they were yelling out various things at the marchers, as we passed. At that point, we just kind of speeded up a little bit [622] so we could pass them in a hurry. We proceeded to 35th and Lowe.

Mrs. Williams: Q. Now, after making the first round —strike that.

As you made the first round, did you notice any spectators at the intersection of 36th and Lowe?

The Witness: A. Yes.

Q. Approximately how many spectators would you say were at that particular intersection?

A. Well, I would—

Q. The first time.

A. About one hundred to one hundred and fifty people.

Q. Did you see any of those spectators carrying any objects or anything in their hands?

A. Not exactly, not on the corner of 35th—at 36th and Lowe, but as we turned right on 36th and Lowe, there was a fellow that had a trumpet or bugle and another individual had a drum, a snare drum.

Q. What were the—what, if anything, were they doing with the trumpet or—and the snare drum?

A. At that time, when we passed the first time, they were not doing anything with them.

Q. Now, as you went around—as you approached [623] the intersection of 35th Street at Lowe, for the second time, this time heading east, what, if anything, did you do?

A. The second time is when one of the neighborhood people stood in front of the line, and we just stopped. This individual didn't move and we didn't move. After a few minutes, the officer standing on the corner asked him to move, and he moved. This was at the point when we had to go into the street, because there was this house that had moved the water sprinkler off the lawn on to the center of the sidewalk. This was when we went into the center of the street long enough to get out of the direct aim of the water.

We came back on the sidewalk, and we marched a little while. There was another water sprinkler there and this was continued all through the block, on the second trip around.

We came around the third time, and the water sprinklers weren't there.

Q. Approximately how many times did you circle the block heretofore described?

A. We circled the block four times. Then we stopped singing.

[624] Q. Were you ordered to stop singing by any individual or any person present at that time?

Mr. Elrod: Objection as to the orders.

The Court: He may answer.

The Witness: A. We were ordered at 29th Street that we had to stop singing at 8:30.

Mr. Elrod: Objection.

The Court: Sustained. It is not responsive.

Mr. Elrod: I ask that the Jury be instructed to disregard it.

The Court: The Jury will disregard the conversation at 29th, as has been testified to.

Mrs. Williams: Q. When you ceased to sing at 8:30, —strike that.

Who, if anyone, or what, if anything, caused the marchers to cease singing at the area of 35th and Lowe—

Mr. Elrod: Objection.

Mrs. Williams: (Continuing) —if you know.

Mr. Elrod: I am objecting as to the cause of their stopping their singing, other than their vocal chords were failing to—

The Court: It is already in the record that he advised the marchers earlier, at 29th Street that [625] they would stop singing at 8:30. Anything over and beyond that which took place, they have a right to inquire into.

You may answer.

Mrs. Williams: Q. Sir, who or what, if anything, caused the marchers to cease to sing in the area of 35th and Lowe, at or about the hour of 8:20?

The Witness: A. I told Frank Ditto and Jerry Herman to go back to the tail end of the line and work all the way up to the front and tell everybody, "No singing, no chanting, not even to breathe hard."

Q. What, if anything, were the spectators doing at this time?

A. They were yelling and hollering and singing, and by this time the band had struck up, the drums and the bugle.

Q. Did you notice any signs in the hands of the spectators, at this time?

A. Yes, various signs. There were signs that had "'KKK"—I don't just remember all the words on the signs, but at this point there were signs, there were many more other than just the signs, "We love our Mayor".

Q. Now, after the fourth time around the area, [626] Mr. Gregory, what, if anything, did you do?

A. Well, after it was past eight-thirty, the neighborhood people that were standing on the corner were singing and making a lot of noise. I asked Attorney Elrod, "How is it we can be arrested if we—

Mr. Elrod: I am objecting as to—

The Court: Sustained. It is not material.

Mrs. Williams: In order to give the Jury a complete picture of everything that occurred and the conduct of these Defendants, their intent or their actions in this area, it would be necessary to get a complete description from this witness of what he did at all given times, inasmuch as we have been charged with congregating for an unlawful purpose, and aiding in a diversion tending to breach the peace, aiding or making a diversion tending to breach the peace. How else—it is putting an undue hardship on the defense—

The Court: Anything that may or may not have been done regarding any persons other than these Defendants is not an issue here as far as legality of conduct is concerned, and I won't let you go into it.

Mrs. Williams: Q. Mr. Gregory, I believe you [627] stated that the spectators were singing and chanting, is that right?

The Witness: A. Right.

Q. As far as you know, did you hear or observe anyone in the area request the spectators to stop singing, chanting, shouting, or singing, at or after 8:30 p.m.?

The Witness: A. No.

Q. Now, as you went around—as you approached the intersection of 36th and Lowe for the fourth time, what, if anything, did you do?

A. Well, Frank and Jerry came to the front of the line, because somebody had thrown a brick at the marchers and the individual who threw it was still standing there. They could recognize him, so I said, "Report it to the officer standing there."

And at that time, we stopped the line while they were being reported. They pointed out the individual that threw the brick—

Mr. Elrod: I am objecting. The question is as to what this defendant and this witness did. Not as to what a Frank or Jerry did.

The Court: The testimony will stand, and the fact that they stopped and there was a conversation [628] between Mr. Gregory and the police officer will stand, but the Jury will disregard what anyone else may have told Mr. Gregory, or anything he doesn't know of his own knowledge.

Mr. Elrod: There was no testimony that there was a conversation with this Mr. Gregory and the police officer. He said they went up to the police officer—

Mrs. Williams: I will retract it.

Q. Mr. Gregory, at the time that a marcher—strike that.

At the time that a spectator threw an object into the group of marchers, what, if anything, did you do?

Mr. Elrod: I am objecting because the testimony is based on hearsay and—

The Court: There is testimony here that the line came to a stop and Mr. Gregory was advised by someone that a brick had been thrown.

Mr. Elrod: Counsel is now asking a question, "At that time,"—

The Court: She is referring to, "at that time."

Mr. Elrod: (Continuing) —a conversation—

The Court: No. "What, if anything, did you do at that time," was her question.

[629] Mr. Elrod: But the question states, "At that time—after the brick was thrown," and that is based on hearsay.

The Court: Very well. Your objection is well taken in that respect.

"At that time, what, if anything, did you do," is proper without the embellishment of "when the brick was thrown," Mrs. Williams.

Mrs. Williams: All right.

Q. At that time, Mr. Gregory—strike that.

Did the line continue to march steadily from 35th Street to 36th Street, without hesitation, on the fourth time around?

The Witness: A. No.

Q. All right, was the line—did the line come to a halt on the fourth time around?

A. No, I stopped the line on the fourth time around when the incident was reported to me, that a brick had been thrown—

Mr. Elrod: Objection. "An incident," that would be based on hearsay.

The Court: The fact of the occurrence of an incident would be hearsay, but the fact that an alleged incident was reported to him may stand.

[630] Mrs. Williams: Q. What, if anything, did you do, when an incident was reported to you?

The Witness: A. I said I sent Jerry and Frank Ditto, who was in charge of the line, to take the

marchers to the officer, the closest officer involved, and point out the spectator and let him handle it from there on.

At that point, I started the marchers moving again, because I didn't want them standing around while this incident was being investigated or whatever you call it.

I left Frank and Jerry Herman behind and we marched on towards Union.

Q. All right, sir. Now, upon approaching 36th and Lowe Street, what, if anything—for the fourth time, what, if anything, did you observe at that point?

A. Well, at the corner of 36th and Union, there was a tavern on the corner. At this time, people were yelling out the windows. The officers on the corners had made them close the doors up, and they pushed the people in the tavern back inside. We turned the corner—

Mr. Elrod: Objection.

[631] The Court: Sustained.

Mrs. Williams: Q. Upon arriving at this point, what, if anything, did you do?

The Witness: A. We turned right at the corner and proceeded to walk to 35th Street.

Q. And upon approaching 35th Street, at this time, where, if anyplace, did you go?

A. We turned right at 35th Street and we marched toward Lowe.

Q. Upon arriving at 35th and Lowe, where, if anyplace, did you go at this time?

A. We turned right and marched south on Lowe towards 36th Street.

Q. Did you again turn right at this point and proceed back toward Union?

A. No. In the middle of the block we were stopped. The Lieutenant asked me if I would stop the line for a few minutes—

Mr. Elrod: I am objecting to the narrative form.

The Court: The answer is not responsive. I will sustain it for that reason.

Ask another question.

Mr. Elrod: The answer was "No—"

Mrs. Williams: Q. I think your answer was, "No, [632] I did not turn right at that time."

The Witness: A. That is right.

Q. What, if anything, did you observe at this time in regard to the spectators, if anything?

The Witness: A. We turned the corner at 35th and Lowe, heading towards 36th Street. About halfway down the block, there were about 100 to 150 spectators that had formed a line of march ahead of us. At that point, they were just standing there.

The Lieutenant asked me if I would hold up the line until they got those people out of the way. I said, "I will hold up the line, but they have just as much right to march peacefully, as we have."

Mr. Elrod: I am objecting to that.

The Court: The part of the answer that was not responsive: namely, "they have as much right to march as we have," that will be stricken. The rest will stand.

Mrs. Williams: Q. What, if anything, did you then do, Mr. Gregory?

The Witness: A. Well, they were ordered to—

Mr. Elrod: Objection. The question was asked—

The Court: "They were ordered," is the start [633] of the answer.

Were you in a position to hear the answer given?

If this is an assumption of what transpired, it is improper—

Mr. Elrod: "What did you do," she said.

Mrs. Williams: "They were ordered," means he heard—

Mr. Elrod: The question was, "What did you do," and the answer was, "They were ordered."

The Court: No, what did they do, as I understand the question, referring to the crowd.

Let's go back to it, and we won't waste any more time with it.

Mrs. Williams: Q. The second time the line was stopped, at 35th and Lowe, the intersection of Lowe, at 36th, Mr. Gregory, what, if anything, did you observe in regard to the spectators, at that time?

The Witness: A. The spectators who were marching in front of us turned at 36th and Lowe and proceeded to go right toward 36th and Union.

At that point, I talked with Jerry and Frank to make sure there was no incident. I said to Jerry, "So it won't look like we are following [634] them, instead of turning right at the corner, we will continue straight across the street, on towards 37th Street."

Q. And did you, in fact, continue to walk toward 37th Street?

A. Right. We continued to walk toward 37th Street.

Q. At that time, Mr. Gregory, did you have any knowledge there was a funeral home at 37th and Lowe?

A. No.

Q. At that time, did you have any knowledge that there was a wake at the corner of 37th and Lowe?

A. No.

Q. Were there police officers present as you proceeded south on Lowe towards 37th Street?

A. Yes.

Q. Did any of the police officers advise you, or anyone in your presence, that there was a wake in a funeral home at 37th and Lowe?

A. No.

Q. What, if anything, were the marchers doing as you proceeded south on Lowe, towards 37th Street?

A. Just marching straight, and we had slowed it up quite a bit, because there was quite a few [635] more people that had gathered around, and there was much more confusion going on. We were asked to wait until the officers had cleared away the people and regrouped them, the officers that were waiting for us at the corner, and my reaction was, "We will stay here until you tell us."

Mr. Elrod: Objection to his reaction.

The Court: Sustained as to his reaction.

Mrs. Williams: What, if anything, did you do when you were requested—strike that.

What, if anything, did you say when you were requested to wait until the police officers regrouped them?

A. I told Attorney Elrod that I would—that we wouldn't move until he told us to.

Q. Were the marchers, at this time, singing, chanting, shouting, or making noise?

A. No.

Q. What, if anything,—were there spectators present at this time?

A. Yes.

Q. What, if anything, did you observe the spectators doing?

A. Well, I observed the band still playing loud, [636] and bricks were being thrown. They were just jeering at us and cursing us and saying, "Nigger, go home," and

they were singing a song, "I wish I were an Alabama Trooper," and that was about the height of it.

Q. Do you recall the tune that the band was playing?

A. No, I don't. It was a marching tune, but I don't recall the tune.

Q. Now, as you reached the intersection of Lowe Street with 37th Street, what, if anything, did you do then?

A. We turned right at 37th and Lowe.

Q. And where, if anyplace, did you go?

A. We were headed east—west on 37th Street, and again we were requested by Attorney Elrod to wait at that spot until he came back and told us it was okay. Again, we waited there.

Q. Now, what, if anything, did you do after waiting?

A. We just stopped and stood still. I went back to the back of the line and explained to them why we were waiting, that we had been requested to wait. I had agreed that we would wait until we were told to proceed—

[637] Mr. Elrod: I am objecting as to the conversation, as to what they were told and what they were not told.

The Court: He can testify if he told the marchers certain things. He can testify that this is what he told them. As far as his reason and so on, it will go out.

Mrs. Williams: Q. Now, Mr. Gregory, did the march resume thereafter?

The Witness: A. Yes.

Q. And where, if anyplace, did you go?

A. We went over to 37th and Union and turned right and headed north on Union across 36th Street, and continued north on Union toward 35th Street.

Q. Upon reaching the intersection of 35th Street and Union, upon marching north on Union toward 35th

Street, between 36th and 35th, did you have occasion to have a conversation with Commander Pierson?

A. Yes.

Q. Who was present at that time?

A. Frank Ditto, Jerry Herman, and you.

Q. And what, if anything—strike that.

Was there any city prosecutor present?

Mr. Elrod: Objection. He stated who was present.

[638] The Court: He may answer.

The Witness: A. Not at that point when we had that conversation.

Mrs. Williams: Q. What, if anything—was there more than one conversation at this—

The Witness: A. Yes.

Q. What, if anything, was said—what did you say to Commander Pierson and what did Commander Pierson say to you, at this time?

A. At this time, Commander Pierson, on the first conversation, said, "We are going to let you march around two more times, and then I would like to ask you to take the marchers out of here."

Q. What, if anything, did you say?

A. I said that we were marching peacefully, not breaking no laws, and it is our Constitutional right to peacefully protest, we had no intention of marching around two times and leaving.

Q. Were there spectators in the vicinity as this conversation was being held?

A. There were spectators in the vicinity, but not close to us, at all.

Q. And what, if anything, were the spectators doing—strike that.

[639] Were the other marchers continuing to march while this conversation was being held?

A. No.

Q. What, if anything, were the spectators doing while the marchers had stopped at this time?

A. Standing in the street, singing, calling us "nigger," and "nigger go home." They were calling us dirty names.

Q. Now, I believe you stated that you had more than one conversation at this time, is that correct?

A. Right.

Q. What, if anything, was said at the time of the second conversation, and who was present?

A. At the second conversation, Commander Pierson came back and Attorney Elrod was with him. Again he repeated that he would let us march around two more times and then he would tell us—he would ask us out—to keep marching east on 35th, out of the neighborhood. At that time, Attorney Elrod said, "If you don't"—

Mr. Elrod: Objection, if Your Honor please, unless it was stated to this Defendant or this witness.

The Court: Subject to that qualification, I will sustain the objection.

[640] Mrs. Williams: All right.

Q. Did Mr. Elrod say anything to you, at this time?

The Witness: A. He said, "You proved a point, and I am sure that if you stayed in more than twice around, you will be arrested.

Q. And who was present at the time that this conversation was taking place?

A. Frank Ditto, Jerry Herman, you, and myself, Commander Pierson, and Attorney Elrod.

Q. And was there any other conversation at this second point, as near as you can remember?

A. No more than just personal conversation that Attorney Elrod and I was having in the process of walk-

ing. It didn't have anything to do with what had been said.

Q. All right, now. Then after that conversation, were there any other conversations at this point?

A. No.

Q. What, if anything, did you then do?

A. I walked back to the back of the line and explained to each of the marchers the conversation that had gone on ahead with Commander Pierson and myself. I explained to them that we were within [641] our Constitutional rights and that if anything was said or if anything happened for no one to worry because we would decide up front what course of action would be taken, regardless of anything that happened. This was passed on, and I told each and everyone of them, personally, "Don't worry about anything, don't break the line," and I came back up front and we continued to march over 35th Street to Lowe. We turned right and headed south on Lowe to 36th Street, and right again, and west on 36th Street.

Then, we marched to Union and right, and then north on Union to 35th Street. Then we marched right on 35th Street to Lowe and right on Lowe to 36th Street.

Then right at 36th Street to Union, and right on Union to 35th Street. Midway of the block, that is where we were stopped.

Q. At this time, what, if anything—strike that.

At this time, did you have a conversation, a third conversation with Commander Pierson?

A. Yes.

Q. Now, who was present? Who was present in the area immediately surrounding you and Commander [642] Pierson?

A. Jerry Herman, Frank Ditto, and you.

Q. And what, if anything, was said at this time?

A. At this time we were asked if we were going to keep straight over 35th Street or were we going to turn at Lowe.

I said, "We are going to turn at Lowe."

Q. And what—was there any further conversation, as near as you can remember?

A. No.

Q. What, if anything, occurred?

A. Well, at that point Commander Pierson got on the bullhorn and announced to the group that if we did not leave the area we were under arrest, and that anyone who wanted to leave the area would be escorted out, safely.

At that point, I addressed the group.

Q. What, if anything, did you say—

A. I told them that we were within our Constitutional rights, and it seemed mighty strange to me that the Chicago Police Department could give us protection out of a place, but they couldn't protect us while we were in it, and that we were not breaking the law.

I told them that we were under arrest, and [643] for no one to go limp or say anything as we were placed under arrest. I told them to walk to the police van because we were being arrested falsely.

At that time, he was still talking on the bullhorn. At that time he said, "You are under arrest." We proceeded to get into the police van.

Q. Now, would you explain to the Court and this Jury what you meant when you said, "Do not go limp"?

A. To go limp is a tactic that is used in non-violent movements when you are placed under arrest. The more

you can relax your body, if you are hit or punched or handled rough, the less it will hurt you, because the muscles are not tensed or hardened.

When an arrest is made, we usually fall to the ground and just stay limp, which means the arresting officer will have to pick you up and carry you to the van. If all of your muscles are not tight, if you are thrown in the van, if you can keep from being tensed at anytime, if you are hit with a nightstick or if you are thrown into the wagon, you will have less chance of breaking a bone or less chance of being seriously hurt. So when we refer to going limp, it is just a mental condition and a physical complete relaxation. This is what I told [644] them not to do, so it wouldn't look like we were resisting arrest in no shape, form or fashion, to an extent where the officers wouldn't have to do anything but direct us to which car they wanted us in. This was the extent of my conversation with the marchers before we were arrested.

Q. Mr. Gregory, were you able to observe or—strike that.

Did you observe the manner in which the marchers entered the police vans?

A. Yes, we returned to the front of the line and marched into the street, and into the police van, and when one was filled up, the rest of the marchers got into the other.

Q. Now, were the marchers carrying signs during the period of time that they were in the area on this particular evening?

A. Yes.

Q. And would you tell—strike that.

Did you observe what was on the signs that the marchers were carrying?

A. Some of them.

Q. All right.

A. "Ben Willis Must Go," "Mayor Daley, get rid of [645] Ben Willis," "Quality Education for all Chicago kids."

Q. Is that as much as you can remember that was on the signs?

A. Yes.

Q. Now Mr. Gregory, you have been charged specifically with collecting in a crowd or body for an unlawful purpose.

Would you explain to this Jury whether or not the purpose of this march led by you on August 2nd, 1965, was to protest segregated schools in the City of Chicago for Negro children, or for another reason—

Mr. Elrod: I am objecting.

The Court: Sustained.

Q. Would you explain to this Jury and the Court what was the purpose of the march?

Mr. Elrod: Objection. It invades the province of the Jury. This is one of the charges in the complaint. I think from the evidence heretofore given, the Jury can ascertain the purpose of the march, but to ask the witness—

Mrs. Williams: He explained what he intended—

Mr. Elrod: But, this is the ultimate conclusion the Jury must reach on one of the counts.

The Court: The purpose or cause they sought to [646] espouse has no probative value.

Mrs. Williams: Except he was charged with collecting for an unlawful purpose and in order to have a purpose you must have an intent. I feel that I must ask him what was his intent in leading this group into the area.

The Court: The objection is sustained, Mrs. Williams.

Mr. Elrod: Thank you.

Mrs. Williams: I have no further questions.

Cross Examination by Mr. Elrod.

Q. Mr. Gregory, you say there is a gas station at 29th and State?

A. At 29th and State, yes.

Q. You are sure it is not 28th and State?

A. It could very well be at 28th and State. There is a bunch of vacant lots there, so the whole area looks alike.

Q. The whole area—

A. (Interposing) —looks alike, because there is not that many buildings around.

Q. Now, when you entered this area at 35th and Lowe, you saw a lot of neighborhood people there; you [647] said three to four hundred—

Mrs. Williams: Objection, if the Court please, to distinguishing them as neighborhood people. There has been no proof that they were neighbors.

Mr. Elrod: Except by Mr. Gregory's statement. He said neighbors.

Mrs. Williams: He said spectators.

Mr. Elrod: He said neighbors, twice.

The Court: Did you understand the question?

The Witness: Repeat it.

Mr. Elrod: Q. Are you sure there were three or four hundred people there, as you first entered into this area?

The Witness: A. Not by actual count. I said that there were three or four hundred people there as far as I was concerned. I would say that it seemed like there were a lot of people.

Q. You say you saw signs saying, "We love our Mayor"?

A. Yes.

Q. You say they were all printed signs about the same size?

A. Yes—

Mrs. Williams: If the Court please, I object [648] to this, because he objected to a description by Mr. Gregory, and if he wants it to go in—

Mr. Elrod: No, I objected to the conclusion of Mr. Gregory. I did not object as to what the signs were.

The Court: I sustained an objection to the conclusion that this was a prearranged or organized effort. The question here is, were they printed.

Mrs. Williams: All right.

Mr. Elrod: Q. You stated that you saw other signs, later. You stated that one of the signs you saw was "KKK". Was that the same type of signs as the other signs?

The Witness: A. No—

Mrs. Williams: Objection as being immaterial or irrelevant what the signs—

The Court: He may answer.

Mr. Elrod: Q. Was that the same type of printing as the other signs, "We Love our Mayor"?

The Witness: A. No.

Q. You stated that you did not hear anyone ask these neighborhood people get off the streets. Could it have been possible—

Mrs. Williams: Objection, if the Court please. [649] That is not the testimony. His testimony is that he didn't hear anybody ask the neighborhood people to stop singing. That is what I asked him.

Mr. Elrod: There was also a question as to—

The Court: The Jury is going to have to rely upon their own recollection. I am going to let him answer the question.

Mrs. Williams: It is an incorrect assumption that he is asking. He is going on a false assumption that he said this.

The Court: Inquire of him whether or not he gave that answer to that question.

Mrs. Williams: All right.

Mr. Elrod: All right, I will rephrase the question.

Mrs. Williams: Ask him—

Mr. Elrod: I will rephrase the question.

The Court: All right.

Mr. Elrod: Q. Mr. Gregory, did you hear all of the commands of the police department at that location between the area of 35th and 36th, between Union and Lowe on August 2nd, 1965, to any of these neighborhood people?

Mrs. Williams: Objection, if the Court please. [650] It calls for a conclusion of this witness, "Did you hear all of the commands."

Mr. Elrod: I am asking him if he heard all of the commands.

Mrs. Williams: Well, how many were given, is the proper question, if the Court please.

Mr. Elrod: If he doesn't know—

The Court: He assumes that commands were given, I assume. He can ask whether or not he heard any commands being given to any persons in the neighborhood.

Mrs. Williams: That is right.

Mr. Elrod: Q. Did you hear any commands being given to any of the neighborhood people on that night?

The Witness: A. Yes.

Q. You did hear some commands?

A. Yes.

Q. Did you see any police officers in the close proximity to any of these spectators, that were in this area watching or observing your procession?

A. Yes.

Q. Were these police officers close enough that they could have had a conversation with any of these people?

A. Yes.

[651] Q. Were they far enough that you could not hear what they were saying if there was a conversation, were they far enough from you?

A. No.

Q. At all times, did you observe the police officers in the close proximity to a spectator you were within earshot of, or could hear what was being said, if anything?

A. No, the ones I could see, I was within earshot of. The ones I couldn't see I was not.

Q. When you proceeded south on—south on Lowe Avenue, crossing 36th Street, what was on the immediate corner or who was on the immediate corner, that would be the southwest corner of 36th and Lowe, at the time you proceeded to cross the street at 36th Street—

Mrs. Williams: Objection, if the Court please. That is assuming that there was someone on the southwest corner. The testimony is, that there were spectators in the area, but not on any specific corner.

Mr. Elrod: I believe that there was testimony that there were police officers who came up to clear the way, and he was asked to stop—

[652] Mrs. Williams: Not on the southwest corner.

Mr. Elrod: That is across the street.

The Court: Let him answer.

Mrs. Williams: All right.

Mr. Elrod: Q. Do you understand the question, Mr. Gregory?

The Witness: A. Give it to me again.

Q. Who, if anyone, was on the southwest corner of 36th and Union as you were proceeding to cross the street?

A. Spectators and about fifteen to twenty police officers.

Q. Approximately how many spectators were there, as you were walking across 36th Street?

A. About two or three hundred.

Q. Was there an island, or was there a pathway, or was the sidewalk free of people?

A. When we stepped off the curb, police officers opened up a path for us.

Q. So when you proceeded across on to that sidewalk, on to the southeast corner, it was clear at that time?

A. Right.

Q. Now, you stated you came back down Union [653] between 35th and 36th, you had a conversation with a Commander Pierson?

A. Right.

Q. And present, you stated, was Miss Williams, Jerry Herman and Frank Ditto?

A. Right.

Q. You saw no one else present at that time, is that correct?

A. I didn't say that.

Q. Who else was present at that time?

A. I wouldn't know.

Q. Was any police officer present?

A. There is a possibility that there could have been.

Q. Could there have been a man with a tape recording device present at that time?

A. There is a possibility there could have been.

Mrs. Williams: If the Court please, this is not proper cross, what could or could not have been.

Mr. Elrod: As a matter of fact, it was asked on direct.

Mrs. Williams: No, I didn't say anything about a tape recorder.

Mr. Elrod: Now, I am sure we have more leeway on [654] cross than we have on direct.

Mrs. Williams: Not as to what could have been.

The Court: I will sustain the objection as to the probabilities of what is not overly obvious.

Mrs. Williams: He could have had a tape recorder in his lapel.

The Court: Anybody could have.

Mrs. Williams: He doesn't know.

Mr. Elrod: Q. Now, you stated that there was a second conversation, Mr. Gregory, and that took place when some other people were present.

Was that at the exact same location?

The Witness: A. No. About twenty-five yards from—

Q. Further north?

A. Right.

Q. You stated that someone, meaning myself, stated that you proved your point. Was there any further elaboration on that point?

A. No more than general conversation that you and I usually have in the course of marching.

Q. In one of these conversations that night, were you told that Mayor Daley was, in fact, not home?

Mrs. Williams: Objection, if the Court please.

]655] The Court: Sustained.

Mrs. Williams: It is immaterial, and I object.

The Court: Sustained.

Mrs. Williams: And I ask that the Jury be instructed to disregard it.

The Court: The Jury will disregard the remarks concerning the Mayor being home or not being home.

Mr. Elrod: Q. Mr. Gregory, at 35th Street between Union and Lowe, at about 9:25 p.m., you stated that you had another conversation with Commander Pierson, is that the approximate time and location?

The Witness: A. That is the approximate time but the location was—yes.

Q. Between Union and Lowe on 35th Street?

A. Right.

Q. Just west of the alley, is that correct?

A. Right.

Q. And do you recall his saying anything to the effect that your presence here has created a dangerous situation?

Mrs. Williams: Objection, if the Court please. It has been asked and answered what the conversation was.

The Court: This is cross examination, and you [656] may go into it.

The Witness: A. No.

Mr. Elrod: Q. You don't recall that?

A. No.

Q. You did state, however, that while you were addressing other people of the group, the Commander was still using his bullhorn and still talking?

A. Right.

Q. On the bullhorn?

A. Right.

Q. Did you hear everything he was saying while you were talking to other people—

Mrs. Williams: Objection, if the Court please. How would he know whether he heard everything?

Mr. Elrod: He said he heard him—he still heard him talking on the bullhorn. I want to know if he heard everything he was saying.

The Court: He may answer, at the time he was talking, did he become aware, by use of his ears, of the subject—

Mrs. Williams: That isn't what he asked him. He asked him what he heard. If he wants to ask him what he understands, it is a matter of semantics.

Mr. Elrod: That is right.

[657] The Court: The whole thing is a matter of semantics.

You may answer.

The Witness: A. No.

Mr. Elrod: Q. You didn't understand what he was talking about to this group?

The Witness: A. I didn't understand what he was saying. I didn't hear what he was saying while he was talking to this group.

Q. But he was using the bullhorn?

A. Right.

Q. Did you understand Commander Pierson—strike that.

Was Commander Pierson wearing a uniform that night?

A. Yes.

Q. Did you know who Commander Pierson was?

A. No.

Q. Was he wearing a uniform—did he have anything, any insignia at all?

A. If he did, I didn't notice it.

Q. You knew him to be a police officer, didn't you?

A. I knew him—the uniform he had on made him [658] stand out more than just an ordinary police officer, but what it was, I couldn't tell you.

Q. Did you understand the gist of Commander Pierson's request of you and the other marchers, at that time, that he wanted you to leave the area?

Mrs. Williams: Objection, if the Court please. What Commander Pierson meant, I object to that. He is looking into his mind, now.

The Court: He asked him if he understands.

Mrs. Williams: Yes, the gist of what—

The Court: The gist of Commander Pierson's remarks, to be an expression of his desire for the marchers to leave the area.

Mrs. Williams: If the Court please, he is asking Mr. Gregory to look into Commander Pierson's mind.

The Court: No, the understanding—

Mrs. Williams: The gist—

The Court: Yes, made to—

Mr. Elrod: He didn't give the verbatim words. I didn't ask for the verbatim words.

Q. Do you understand the question?

The Witness: A. Give it to me again.

Q. Did you understand the gist of Commander [659] Pierson's remarks at that time, that he wanted you to leave the area?

Mrs. Williams: I am objecting to that, if the Court please, the gist was that he wanted you to leave the area. This again is calling for a conclusion by this witness to understand what was in Commander Pierson's mind, which this witness can't do.

The Court: The question asks him his understanding of the words uttered by the Commander. The gist of

what he said is the question, and the question may be answered. We are in semantics, again.

Mr. Elrod: Q. Do you understand the question?

The Witness: A. You are asking me what Commander Pierson said, how did I interpret that.

Q. Yes.

A. I interpreted it that they didn't want no colored folks over there.

Q. Were there any white folks in your march?

A. Yes.

Q. Approximately how many white folks was in your march?

A. I didn't count them.

Q. Were there any white folks arrested along with [660] you, Mr. Gregory?

A. Yes.

Q. The first time Commander Pierson talked to you, did he mention anything about the presence of the marchers or your continued presence was about to create a riot?

A. No.

Q. Did he mention anything the second time he talked to you—

A. No.

Q. Did he mention anything about a dangerous situation?

A. Not that I can recall.

Q. Did he mention anything about a dangerous situation the third time you talked to him?

A. Not that I recall.

Q. You can't recall that, is that correct?

A. Yes.

Q. Are you a lawyer, Mr. Gregory?

Mrs. Williams: Objection, if the Court please. He said what he was.

The Court: He may answer.

The Witness: A. No.

Mr. Elrod: I have no further questions.

[661] The Court: Is there any redirect, Mrs. Williams?

Mrs. Williams: Yes, sir.

Redirect Examination by Mrs. Williams.

Q. Mr. Gregory, you are an entertainer, is that correct?

A. Yes.

Q. You are an author, is that correct?

A. Correct.

Q. How many books have you written, Mr. Gregory?

A. Three.

Mr. Elrod: Objection.

The Court: He may answer.

Mrs. Williams: Q. You are a lecturer, is that right?

The Witness: Right.

Q. Where have you lectured recently, in the last week or two weeks, Mr. Gregory?

Mr. Elrod: Objection.

The Court: Sustained.

Mrs. Williams: Q. Have you lectured in any universities within the immediate area of Chicago?

Mr. Elrod: Objection.

The Court: Sustained.

[662] Mrs. Williams: Q. Mr. Gregory, did you have or did you receive any—strike that.

Did you receive any legal advice from your attorney during the time that you participated in the march on August 2nd, 1965?

Mr. Elrod: Objection.

The Court: Sustained.

Mrs. Williams: Q. Mr. Gregory, did you, in the presence of any city official, request legal advice from your attorney?

Mr. Elrod: Objection.

The Court: Sustained.

Mrs. Williams: Well, if the Court please, may I state this. The Corporation Counsel's last question, "Are you a lawyer," presupposes he was attempting to interpret the law.

The Court: There is no presumption that because he is an entertainer and author and lecturer that he might not be a lawyer, blacksmith or bricklayer, in addition.

Mrs. Williams: There is an inference to this Jury, if the Court please, that he was attempting to act as a lawyer.

Mr. Elrod: I think Counsel has explained [663] adequately, any inference.

Mrs. Williams: No, I haven't explained anything.

Mr. Elrod: Yes.

Mrs. Williams: I would like to, but I won't.

The Court: I will sustain the objection. If this requires an explanation of something in the instructions, I will consider it at the time.

Mr. Elrod: Thank you.

Mrs. Williams: Q. Mr. Gregory, did you receive any legal advice from Attorney Elrod while you participated in the march on the 2nd of March, 1965?

Mr. Elrod: Objection.

The Court: Sustained.

Mr. Elrod: If Your Honor please, I think—

I am trying to talk softly so the Jury won't hear me.

The Court: Do you want to be heard in chambers?

Mr. Elrod: It is just—it is very short.

The Court: Very well, bring your machine in. The Jury might as well step out.

(Whereupon, the following proceedings were had in chambers, outside the presence of the Jury.)

[664] Mr. Elrod: Judge, I would like—

The Court: Just a minute.

His testimony as to—any man's testimony as to his profession or business doesn't preclude the possibility that he may have another occupation.

Mrs. Williams: I asked him what his occupation was, and when the inference is raised by, "Are you a lawyer," and his statement, "You are not breaking the law," I can see where this is leading down the primrose path to the argument. It tends to lead sixty or sixty-five people into a situation on which he was not qualified to advise them, and I think it is entirely proper that it be made known to this Jury that he asked for and received legal advice.

Mr. Elrod: Your Honor has ruled on this particular point. What I wanted to discuss outside the presence of the Jury is that Counsel had five objections sustained in attempting to get answers to questions on this particular point. I am sorry I objected five times, which Your Honor sustained, and I think there should be an instruction at this point that it not go into further—

Mrs. Williams: I didn't ask five times.

The Court: Well, it was repetitious.

[665] Mrs. Williams: Well, I kept trying to find a way that you would let him answer, and I think it is my duty to search and try to find a way to rephrase it so that I can find out what should be known.

The Court: I don't think the fact that if he had been a lawyer or if they assumed that he had been a

lawyer, that it would make any difference in passing on the Constitutionality of the situation.

Mrs. Williams: Judge, a lawyer would be a better qualified person. We do this every day. This is your right.

The Court: And if a lawyer makes a mistake, it is no justification for the client—

Mrs. Williams: No, no, but at least you cannot give the Jury the inference that here, that Dick Gregory, comedian, tried to stand out here and practice law.

The Court: We can't allow the Jurors out there to practice law, either.

Mrs. Williams: This was the only assumption.

I was ordered to bed, threatened by a stroke, and Mr. Elrod knows I got out of bed and came down there.

[666] Mr. Elrod: For the purpose of the record, I know it.

Mrs. Williams: You weren't there, but you heard my mother and you heard Father Taylor say I was threatened by a stroke, and I got out of bed and—

The Court: That isn't the point.

Mrs. Williams: You say I am not practicing law.

The Court: Whether a lawyer was present or not is of no probative value, as to the fact that it has any meaning at all inasfar as the guilt or innocence of these defendants is concerned.

Mrs. Williams: But once the door is opened up by the prosecution, "Are you a lawyer," it would seem to me that it would be proper.

The Court: The answer was no.

Mrs. Williams: It is proper for the defense counsel to come along and close it if she can.

The Court: Why close it when he answered no, Mrs. Williams? Certainly there can be no—off the record.

(Whereupon, there was an off the record discussion.)

[667] (Whereupon, the following proceedings were had in open court in the presence of the Jury.)

The Court: Is there any further redirect, Mrs. Williams?

Mrs. Williams: There is no further redirect.

The Court: Any recross?

Mr. Elrod: No recross.

Mrs. Williams: May it please the Court, I wish to state that if the Defendants, Howard Barber, Gean Gregory, James Gant—Charles Gant, I am sorry, and William Dixon were called to the witness stand to testify, that their testimony would be substantially the same as the testimony just given by Mr. Dick Gregory, except as to the conversations held outside their presence.

(Witness Excused.)

The Court: Will the City accept the stipulation?

Mr. Elrod: Yes.

The Court: Very well.

Mrs. Williams: The Defense rests.

Defendants Rest.

[668] The Court: Do you anticipate any rebuttal?

Mr. Elrod: The City rests.

Plaintiff Rests.

The Court: Ladies and gentlemen of the Jury. The trial of the issues as far as the presentation of the evidence has just concluded. You can retire to the Jury room and we will proceed further as expeditiously as we can.

(Whereupon, there was a short recess.)

(Whereupon, the following proceedings were had in chambers, outside the presence of the Jury.)

The Court: We are now discussing the Defendant's instruction number four.

"The Jury is instructed that on August 2, 1965, there was in force in the City of Chicago, the Constitution of the State of Illinois which reads in part:

At Article II, Section 17—

'The people have the right to assemble in a peaceable manner to consult for the common good, to make their opinions to their [669] representatives, and to apply for redress of grievances.'"

Mr. Elrod: I am objecting.

The Court: That is—

Mrs. Williams: In favor of this, I would like to state that the City introduced evidence by way of Mr. Larmon, I believe was his name, that there was in full force and effect on the second day of August, 1965, a statute which I believe is Chapter 34-6, Section 6—

Mr. Elrod: 36.

Mrs. Williams: 36?

Mr. Elrod: 36-31

Mrs. Williams: Well, whatever the correct citation is—

Mr. Elrod: 36-31.

Mrs. Williams: (Continuing) —36-31 which provided that parade permits should be obtained. It was stipulated by the Counsel for the Defense that a pre-parade permit was not obtained. The City in its argument against the Defense's motion for a directed verdict stated that the unlawful purpose—one of the unlawful purpose or purposes which the City relied upon for its case in chief against these [670] defendants was collecting in a crowd

or a body for the unlawful purpose of conducting a parade without a permit.

I respectfully submit to Your Honor that the defense has a right to inform the Jury that in certain circumstances, the defendants did have a Constitutional right to assemble in a peaceable manner to seek redress of their grievances, and there is no other way they can know except for this provision from the Constitution of the State of Illinois to be given to them.

We cannot assume that each one of these Jurors knows the Illinois State Constitution.

Mr. Elrod: If Your Honor please, the City respectfully states that these Defendants are charged with the specific violation of a specific ordinance of the Municipal Code of the City of Chicago.

The facts or the law that is in effect in the State of Illinois, in the United States of America, or any other jurisdiction that has jurisdiction over the area at 35th and Lowe, where the arrest took place, should not belong to this Jury. It is a question of law.

[671] The question of law is, were the Defendants violating 193-1. The reason or the Constitutionality of 193-1 is not applicable or is not appropriately or should not appropriately be given to this Jury. If there is an ordinance, and that ordinance happens to be 36-1 or 193-1, that is in direct opposition or entirely in opposition to the provisions of the Illinois Constitution or the United States Constitution, it is not within the province of this Jury to determine that.

To instruct the Jury as to the Constitutional provisions or laws that are not pertinent hereto, and that are not part of the Municipal Code of the City of Chicago, I believe is in error.

Mrs. Williams: May I state this in retaliation: The Constitution—

The Court: Rebuttal, rather than retaliation.

Mrs. Williams: Yes.

The Constitution is, at all times, pertinent to every ordinance. It is part and parcel of every ordinance, and at the time that Mr. Larmon—it was anticipated that Mr. Larmon was going to testify that these people did not have a parade permit, I raised this specific question, that if we are going [672] into the violation of another ordinance for which these defendants are not charged, then certainly it will be absolutely necessary for this Jury to know that these people did have a right, under certain given circumstances, to assemble in a peaceful manner.

The Court: Whether this will be given or not will depend largely upon what the instructions tendered by the City are concerned with.

I will make the observation that the Ordinances of the City of Chicago are presumed to be Constitutional, and this particular ordinance in question here, having to do with parades, provides for certain conditions to be met. These conditions were not met, according to the testimony in this case, so it would be an improper instruction to allow an inference to be drawn that the Constitution was being violated by enforcing the ordinance.

Mrs. Williams: Well—

The Court: We will hold this in abeyance until we see what he submits.

Mrs. Williams: Before it slips away from me, Judge—

The Court: Yes?

[673] Mrs. Williams: (Continuing) —in some instances a constitutional ordinance may be applied to a situation in an unconstitutional manner, and it would seem to me that at the time, it was inferred by Mr. Larmon's testimony that these people committed a violation of another ordinance, parading without a permit, and it was inferred and made known to this Jury that there are—well, it wasn't inferred, it was actually made known, that there is an ordinance governing this type of conduct.

Now, then, not to enlarge upon that and let them know that when it isn't a parade and that it is a peaceful assembly and picket and protest—you see, for people to have a right to gather—it is actually narrowing the right of the Defendants. We did not call it—it was not called a parade, and I think it should be left up to the Jury as a matter of fact to determine whether or not the ordinance pertaining to parades applied to these people, or whether the people—or whether the Constitutional guarantee applying to rights of people to seek redress of grievances and assemble in a peaceful manner applied to these people in these given circumstances: Now, if they determined that [674] the Defendants were parading, then of course Mr. Larmon's testimony would take over. If the Jury decides, as a matter of fact, that they were not parading, and that they were protesting and exercising their right to assemble peacefully, then the Constitution would take effect. Just to leave them there, bland—

Mr. Elrod: Aren't we arguing semantics, here?

The Court: No.

Mr. Elrod: Well, the word parade—in the ordinance 36-31, it says, "parade, procession, or open air meeting."

The words "parade, procession, or open air meeting," and the words "to protest and walking down the street," I mean—

The Court: I think it is the Court's opinion that the assembly and the manner in which it was conducted would fall under the ordinance governing parades, assemblies and open air meetings and such. We may have occasion to go into that matter later, I don't know.

Mr. Elrod: Judge, you are going to pass this instruction?

The Court: Yes.

Mr. Elrod: I take it that it depends upon the [675] instructions—

The Court: Well, let's wait until we get to it.

Mr. Elrod: The point I'm making is, that the City has instructions that it would tender depending upon whether or not you accepted this instruction.

I may or may not be making myself clear.

The Court: Which came first the chicken or the egg? I want the Defendants to have a fair trial, and I want the people of the City of Chicago to have a fair trial. If it is in the interest of justice not to submit either, or one and not the other—

Mr. Elrod: I'm not talking about the ordinance—

The Court: I have in mind now the parade ordinance.

Mr. Elrod: Assuming that I submit that—

The Court: Yes?

Mr. Elrod: Then assuming you allow the submission of this, I will have other ones I will want to submit, depending on whether or not this one is submitted.

The Court: All right, we will wait.

Mr. Elrod: Mrs. Williams, do you understand what I mean?

Mrs. Williams: I know what you mean. You want instructions saying that the right to assemble is [676] limited in certain instances?

Mr. Elrod: Exactly.

Mrs. Williams: Certainly.

Mr. Elrod: I have one right here.

Mrs. Williams: I think that would be proper.

Mr. Elrod: It would only be proper if that one were admitted.

Mrs. Williams: Yes.

Mr. Elrod: That is all I am saying.

The Court: All right.

Now, your Defendant's 5.

> "The Court instructs the Jury that merely because a finding of guilty of disorderly conduct carries a penalty of a fine and no imprisonment should not in any way prejudice or influence the jury in arriving at their verdict."

That one I will deny. You are not surprised, are you, Mrs. Williams?

Mrs. Williams: No.

Mr. Elrod: I don't object.

Mrs. Williams: You don't object?

The Court: Here is your original, back.

Mr. Elrod: I want to ask you a question, off [677] the record.

Mrs. Williams: Judge, aren't these to stay with the —the ones that you refuse—

The Court: The ones that are numbered and marked become a part of the file, and I don't want to have those refused stacked up with those that I send to the Jury, because I don't want them—

Mr. Elrod: May I ask Mrs. Williams a question, off the record?

(Whereupon, there was an off the record discussion.)

The Court:

"The responsibility rests upon you to determine the facts of this under the law, as the court may give it to you, uninfluenced by any expression of opinion that the Court has made or may hereafter make upon matter of fact. The Court has not intended at any time during the trial of this case, and does not intend at any time, to express any opinion on any matter of fact, and if the Court has expressed or does express any opinion on any matter of fact, you are instructed to disregard such opinion, and it is your duty to disregard it."

[678] An instruction along this line I always give whether it is tendered or not. The strongest language that you can concoct is acceptable to me. I have one—

Mr. Elrod: I have one just like that with another thing which—

Mrs. Williams: Yes, that is what I am afraid of.

Mr. Elrod: No, the other thing is what we were discussing.

The Court: Off the record.

(Whereupon, there was an off the record discussion.)

Mrs. Williams: That is fine, Judge. I will withdraw this one.

The Court: This is Number 7 of yours. It has one of the phrases that is in that other book, I believe, isn't it?

Mrs. Williams: Yes, sir.

The Court: Do you want me to make it "refused," or do you want to withdraw it?

Mrs. Williams: I will withdraw it. I have one already marked "refused".

The Court: Keep these withdrawn ones away from [679] my pile of given ones.

Mr. Elrod: Or refused.

Mrs. Williams: Now, this one I feel very strongly about.

Mr. Elrod: It is in this long one, isn't it?

Mrs. Williams: No, no, not this strong.

The Court: All right, the Defense Instruction Number 8 will be given.

Mrs. Williams: This is the same thing, in general terms, as the one you tabled. The 14th Amendment—

The Court: This is the United States Constitution this time?

Mrs. Williams: Yes, sir.

The Court: All right, we will put that altogether.

Mr. Elrod: Judge, if we might go back, you withheld—

The Court: Yes.

Mr. Elrod: This is—do you know which one I am talking about?

The Court: Yes, let's wait until we get a number on it We are going through her numbers, now.

> "The Jury should not be influenced in the slightest degree as to the facts in the case by [680] any assertion or statement of counsel on either side of the case, unless the same is sustained by the evidence in the case."

This is not good.

Mrs. Williams: It sounds like the other one, but it isn't.

The Court: It is not good, though. Your clients are bound by your expressions in your opening statement.

Mr. Elrod: They are bound by admissions, too, by Counsel.

Mrs. Williams: Yes, unless it is sustained by the evidence.

Mr. Elrod: I admit Dick Gregory is guilty; they are bound by that?

Mrs. Williams: If that is part of the evidence, "I, Jean Williams, admit on behalf of my client that he is guilty," this is part of the evidence.

I gave evidence when I stipulated that if they were called to the witness stand, they would testify in substantially the same manner that Gregory did.

The Court: No, and you are certainly entitled to try to influence in your final arguments. You [681] are entitled to cause them to see the facts in the light that you want them to see it.

Mrs. Williams: I withdraw that.

The Court: Do you want to withdraw it?

I will deny it, and you can reserve it for your appeal.

Mrs. Williams: I will withdraw it.

The Court:

"The Court instructs the Jury that in determining whether or not a defendant has been identified as the person who committed the offense charged against him, if any such offense was committed, you must consider all the testimony in the case, both that for the prosecution and that for the defendant, considering their means of identification, their opportunity for identifying the said defendant, and the probabilities or improbability that the defendant committed the offense, if any offense was committed, and if, after so judging and weighing the testimony you are not satisfied by a clear preponderance of all of the evidence that a defendant has been iden-

tified as the person who committed the offense as charged in the complaint, if any was committed, it will be your duty to [682] find that defendant not guilty."

Mrs. Williams: Oh, this identified—

The Court: Withdraw it?

Mrs. Williams: Yes, I will withdraw it.

The Court: Do you withdraw it?

Mrs. Williams: Yes.

The Court: Withdrawn

Mrs. Williams: I just picked up my old Civil Rights thing.

The Court:

"You are instructed that your verdict in this case must be based upon the evidence. You must not speculate, nor conjecture, nor guess as to the facts in this case. If your finding as to any fact in this case can be made only upon a conjecture, or speculation, or guess, then you must find that such fact, if any, has not been proved."

This is technically incorrect. In fact, that must be qualified by "any material fact," if for other reasons it is not objectionable.

Mrs. Williams: Any material fact? I feel very strongly about that in view of the last case I was in.

Off the record.

[683] (Whereupon, there was an off the record discussion.)

The Court: I don't like this one .

Mrs. Williams: I have another one in the alternative.

The Court: Let me deny this one.

Mrs. Williams: All right. This is refused.

The Court:

"You are instructed that it is your duty, as jurors, to consider this case without bias or prejudice against the defendants by reason of race or color. The law is the same for these defendants as it is for any other persons, there being no distinction under the law by reason of color or race."

Mrs. Williams: Give that?

The Court: Yes.

This one is I.P.I.?

Mrs. Williams: Yes, sir.

The Court: It looks like it.

All right, Number 14 given.

Mrs. Williams: All right, sir.

The Court: This probably is a correct statement of the law, but it is kind of backwards, your 15, [684] here. In other words, it is the negative rather than positive approach, and I anticipate there will be another instruction on the weight of the evidence, so in order that they can be considered in comparison with one another, I will put your Number 15 aside.

Mr. Elrod: I would also like to point out that I.P.I. suggests that this type of instruction not be given.

Mrs. Williams: I know. It says, "Don't use the—"

Mr. Elrod: Selected instructions—

Mrs. Williams: No, the—

The Court: Evenly balanced—

Mrs. Williams: The analogy of the scale.

Mr. Elrod: Evenly balanced. It doesn't say anything about analogy.

Mrs. Williams: This is the United States Constitution.

The Court: Now, we are—

Mrs. Williams: Article II, Section 4.

The Court: Free speech. This we will table along with the other Constitutional ones.

Now, I don't think your 18 is a correct expression of the law.

[685] "The Court instructs the Jury that when a defendant elects to take the witness stand and testify, then you have no right to disregard his testimony merely because he is accused of violating an ordinance. When he does testify, he at once becomes the same as any other witness, and his credibility is to be tested by and subjected to the same tests as are legally applied to any other witness."

Mr. Elrod: I have an instruction—

The Court: I think the I.P.I. will protect you adequately on this. I am marking your 18 refused, because it omits an essential element.

Mrs. Williams: Oh, here is the other one about the mere suspicion, conjecture, or speculation on—

The Court: What did you do with the other one, table it?

Mrs. Williams: I made a notation there to get another one for myself.

The Court: I think this is less objectionable than that one.

Mrs. Williams: The Court instructs the Jury that the defendant cannot be found guilty on mere [686] suspicion, speculation or conjecture on the part of the Jury. This is qualified by the word, "mere".

Mr. Elrod: There is an instruction introduced as to what the burden of proof is. Now, to go further and delve into this burden of proof, I think if we define what the burden of proof is, and the City is urging that the Court find that it is the clear preponderance, I think if we cover clear preponderance that—

The Court: All right, the other one we tabled, too, for further—

Mrs. Williams: Yes, sir.

The Court: This will go along with them.

Mrs. Williams: Oh, I withdraw this one, because twenty is the same as the other one you refused.

The Court: You are going to withdraw this one?

Mrs. Williams: I withdraw that one.

The Court: Now here, 21 seems to be in effect a duplication on the burden of proof. Did we put aside the burden of proof instruction?

Mrs. Williams: Your Honor said we would wait and see whether or not we had something better, and I think this is better.

> "The Court instructs the Jury that the [687] burden of proof is upon the plaintiff to prove by a clear preponderance of the evidence, the facts alleged in the complaints and relied upon by the City in this case; and if the City has failed to prove said allegations by a clear preponderance of the evidence, or if the evidence is evenly balanced or preponderates in favor of the defendants, then you should find the defendants not guilty."

Put that in the reserve file. I think we have three of them with the same import.

Mr. Elrod: May I make a comment on "evenly balanced"?

The Court: I am aware of it.

Mrs. Williams: I know what "evenly balanced" says, and I am willing to take out—modify this by taking out "evenly balanced".

The Court: He may already have one in his that doesn't incorporate that.

Mrs. Williams: But your burden of proof doesn't incorporate it like—yours says that you should find a defendant guilty, and there is a lot of psychological [688] value—

Mr. Elrod: No, I don't think I have.

The Court: 22, this is mere or less a duplicate.

Mrs. Williams: This is the same thing, so I will withdraw this one, because we will eventually get around to one of the defendant's preponderances.

Now, how about this one, Judge? This is not clear preponderance, but this is a statement of what the Jury should do. If they say—well, you could say that he did so and so and so and so, but maybe he didn't. Maybe they didn't. Then, actually, I believe it is an accurate statement of the law to say that if there is any theory upon which they can find these Defendants not guilty, they should do that.

Mr. Elrod: Judge, they are asking, "beyond all reasonable doubt".

Mrs. Williams: No, we are not.

Mr. Elrod: Because if there is any theory, that means the slightest theory, and that means the City has to prove beyond all reasonable doubt.

Mrs. Williams: I didn't say "slightest theory".

Mr. Elrod: "Any theory." It could be a theory ninety percent the other way—

[689] Mrs. Williams: Judge, may I state this, for the purpose of the record?

The Court: Surely.

Mrs. Williams: This case does have overtones of a criminal case and a quasi criminal case certainly means part civil and part criminal and there should be a greater weight upon the city in a quasi criminal case than there is on a plaintiff in a mere civil case.

I believe this would actually put the Jury in the correct perspective on what the city must do before they can find that these defendants are guilty. The city should not have a mere burden of clear preponderance of the evidence.

The Court: I think you will like the instructions we are going to give on clear preponderance.

Mrs. Williams: No, if it is Mr. Elrod's—

The Court: It leans your way, terrifically.

Mrs. Williams: If it is the one he usually uses—

The Court: I don't know what he regularly uses, but—

> "If you believe from the evidence that any witness in this case has knowingly and willfully testified falsely on this trial [690] to any matter material to the issues in this case, then you are at liberty to disregard the entire testimony of such witness, except insofar as it has been corroborated, if you find it has been corroborated by other creditable evidence or by facts and circumstances proved on the trial."

Do you think there are any material facts that are in dispute here?

Mrs. Williams: Yes, sir, when Commander Pierson said there was no conversation at all concerning this walking around the block twice, this is our greatest point of deviation.

Mr. Elrod: I think it is inflammatory language.

The Court: It has been criticized, I know, in the upper courts.

Mrs. Williams: Are you saying that police officers are above and beyond the ability to testify falsely?

Mr. Elrod: Am I saying this to you, or to the Jury?

Mrs. Williams: To the Jury.

Mr. Elrod: Of course these officers did not. I don't know anything about any other police officers.

[691] Mrs. Williams: Oh—

The Court: All right.

Mrs. Williams: The Jury has the right to draw that conclusion if they should so see fit.

Mr. Elrod: I am objecting to this instruction—

The Court: I am going to refuse it.

Mrs. Williams: Then we are taking away from this Jury the right to determine whether or not anybody has testified falsely, because what we are saying is that we are going to decide back here that nobody has.

The Court: No, you can certainly argue the discrepancies in the testimony and make allusion to any reasonable inference that can be drawn from the discrepancies to this jury.

> "The burden of proving every material allegation necessary to establish the defendants guilt rests upon the City throughout the trial, and the burden of proof never shifts to the defendant."

Well, this would be faulty unless we also provide an instruction which outlines and delineates every material allegation necessary to establish the defendant's guilt.

Mrs. Williams: You may do so, if the Court please.

[692] The Court: It rests on the City.

Mrs. Williams: These defendants never had to take the witness stand in this case, never.

The Court: That is right.

Mrs. Williams: They could have rested—

Mr. Elrod: That is right.

Mrs. Williams: (Continuing) —right at the end. It was not their duty to prove—

The Court: I think this will be covered by other instructions, and I am going to put it up here in the puzzle pile.

Well, this one I am going to give, because this is certainly not circumstantial evidence, alone.

> "The Jury is instructed that when circumstances, alone, are relied upon by the City for a conviction, the circumstances must be such as are reconcilable with no other reasonable hypothesis than that of the defendants' guilt and must satisfy the mind of the Jury of the Defendants' guilt by a clear preponderance of all the evidence."

Mrs. Williams: The circumstances, alone, relied upon are these, Judge. The City rested its entire case upon the fact that other people came around and [693] other people became noisy and other people became verbally abusive and there was an indication that there might be a riot.

Now, take that away from the situation, such as the night after, when the Defendants went back to the same spot and many of the same spectators were still in the area, if the spectators did not become unruly, then the Defendants did not find themselves arrested. The circumstances alone are what caused their arrest on the 2nd of August.

The Court: I am not concerned with what caused their arrest, or even the fact that they were arrested. The issue here was whether or not there was a violation of the ordinance. The fact of the arrest is just what brings them to Court. I am refusing it.

Twenty-seven:

> "The Court instructs the Jury that when arresting officers testify in a case, they at once become the same as any other witnesses, and their credibility

is to be tested by and subject to the same tests as are legally applied to any other witnesses, and in determining the degree of credibility [694] that should be accorded to their testimony, the Jury have the right to take into consideration the fact that they are interested in the result of the case as well as their conduct and demeanor upon the witness stand, and the Jury are to take into consideration the fact, if such is the fact, that they have been contradicted by other witnesses."

Mr. Elrod: I object to twenty-seven.

The Court: On what basis, Mr. Elrod?

Mr. Elrod: First of all, the officers have an interest in the case, that they are interested in the result of the case.

Secondly, it states, "the arresting officers," and I don't know if the Jury is sufficiently aware of what is an arresting officer and what is not an arresting officer.

Mrs. Williams: Do I understand that police officers —that the City is saying that police officers did not care whether or not they did a good job in the performance of their—

The Court: No, the fact of their interest, that doesn't bother me, because as a result of it, they are subject to false arrest suits and everything [695] else. I am concerned with the last part. The Jury are to take into consideration the fact that if such is the fact, that if they have been contradicted—

Mr. Elrod: That leads to an inference.

The Court: I am going to give it.

Mr. Elrod: The last sentence leads to an inference that there has been a contradiction.

The Court: It says, "if such was the fact".

Mrs. Williams: It says, "if such was the fact." Shall we change this "arresting officers" to "police officers"?

The Court: Now, wait a minute.

Mr. Elrod: It—

The Court: If you take it away from the arresting officers, then you get into a position where their interest in the case isn't the same.

Mrs. Williams: All right.

The Court: We will give it in its present form.

I have about five that we will give.

> "The Court instructs the Jury that the number of witnesses, alone, testifying for one side or the other should not determine the question of the guilt or innocence of [696] the defendants, and simply because the prosecution may have produced more witnesses than the defense does not necessarily mean that the prosecution has proved its case by a clear preponderance of the evidence."

Didn't we have about four of these?

Mrs. Williams: Yes, and each one you knocked out.

The Court: We will pick one that is good out of the—

Mrs. Williams: But you already refused the others that have been tabled over there.

The Court: Now, we will use the I.P.I. If we have to modify it, we will, but I think it is a good instruction. I think it protects you on this. Let me mark this "refused," for you, and you will have something—

Mrs. Williams: All right.

Judge, will we be starting at ten o'clock, tomorrow morning?

The Court: I would like to, so that we can quit early.

Mrs. Williams: All right.

The Court: I am giving this instruction—now, [697] this is a good one. It is similar to one I read from my pile over there, and I think we all have one here, the Court's emphasizing to the Jury that it doesn't mean to intimate what the facts are.

Mrs. Williams: This has already been done, so I will withdraw it.

The Court: Do you want that withdrawn?

Mrs. Williams: Yes.

Mr. Elrod: That hasn't been done. I have one—

The Court: We will get to it. You have the one I used in that first case?

Mr. Elrod: Yes.

The Court: That is the one I read to you, and I think it is about as strong as you can go.

Mrs. Williams: Yes.

The Court: Your instruction Number 30:

> "The Court instructs the Jury, if you find from a preponderance of the evidence that the Defendant, William Gant, did not make or aid in making an improper noise, riot, disturbance, breach of the peace or diversion tending to a breach of the peace, then you must find him not guilty."

[698] In view of the fact that there are two separate charges against William Gant, I couldn't consider this in its present form.

Mr. Elrod: I am objecting on another ground.

The Court: What is your ground?

Mr. Elrod: The City has a similar instruction, and I think this would be a counter-instruction or vice-versa.

Mrs. Williams: Yes.

Mr. Elrod: However, the City's instruction states, "or any of the foregoing acts," and I think that if this

is going to be a counter-instruction, it should state exactly what the City states.

The Court: Isn't this accumulative on your burden of proof, before they can be found guilty, you must find—

Mrs. Williams: But this really drives it home to them, "if you find from a clear preponderance of the evidence"—no, "from a clear preponderance of the evidence that the Defendant, William Gant, did not make or aid in making an improper noise, riot, disturbance, breach of the peace, or any of the foregoing acts, then you must find him not guilty."

Then I should break it down and say, "If [699] you find from a preponderance of the evidence that the Defendant, William Gant, did not—

Mr. Elrod: (Interposing) —collect or—

Mrs. Williams: (Continuing) —did not collect in a crowd or body—

The Court: All right, I am marking it "refused," but keep it on the side. Keep that in a separate file.

Mr. Elrod: You are going to make changes in them?

The Court: I don't know. We will see.

The next one, 31 and 32—

Mrs. Williams: They are all the same.

Mrs. Williams: Except that there are different names for each defendant. This is just one count, Judge.

Mr. Elrod: It doesn't state as to what count—

The Court: What I am getting at here is whether your client's rights would be prejudiced in any way by not giving this instruction, because if I give an instruction that directs a verdict for the Defendant, I will likewise give an instruction that directs the verdict for the City in the alternative language, and that puts ten instructions to the Jury [700] that can't be anything but confusing to them.

Mrs. Williams: Well, it is brief enough that they can read it over until it becomes clear, and I submit to the Court that the complaints are not going into the Jury room with them.

The Court: They may have an instruction in the language of the complaint.

If you do, you say, "from a clear preponderance you will find guilty," or something, the same thing, "not guilty," I assume. If we are going to instruct in the language of the—

Mrs. Williams: The only thing about it is, they do not know, as of now, from anything the Court has told them, what the precise charges are.

The Court: I anticipate that there will be an instruction in the language of the Complaint.

Mrs. Williams: There will be.

The Court: All right, this will advise the Jury of the specific charges against each of the individual defendants.

Mrs. Williams: And it also ends up—nothing—well, knowing this instruction the City gives, it ends up, "If you find from a clear preponderance of the evidence that the Defendant, Dick Gregory, did [701] make or aid in making an improper noise, riot, disturbance, breach of the peace, or diversion tending to a breach of the peace, or any of the foregoing acts, then you must find him guilty."

The Court: If on the other hand, the City fails to prove by a clear preponderance—

Mrs. Williams: But the City's instruction doesn't go that far.

The Court: I haven't given it.

Mr. Elrod: It is not even finished being typed.

The Court: We can always see to it that it is right.

Mrs. Williams: I know it didn't, the last time.

The Court: I am putting this to the side. In the language of the complaint, it will be preemptory both ways.

Mrs. Williams: Oh.

The Court: That is why I said put it in a separate file.

Mr. Elrod: Are we through with the Defendant's—

The Court: Yes, except for the—

Mrs. Williams: May I take five minutes to organize mine so I can put them in a set?

The Court: Yes.

[702] (Whereupon, a short recess was had.)

Mrs. Williams: Oh, I have one more. This is a good one.

The Court: Where is the I.P.I.?

Mrs. Williams: This is a correct statement of the law, isn't it, Judge?

The Court: I don't like your second sentence.

Mrs. Williams: "The mere fact that they are charged with"—

The Court: "The first step," that is surplusage.

Mrs. Williams: Which is surplusage?

The Court: The making of such charge is mere taking the first step toward trying the question.

Mrs. Williams: Well, one of our Jurors said, at one time, if you remember, "I feel that they must have done something, if the police arrested them," and in view of the fact that I heard—

The Court: You are now talking about a Juror who wasn't sworn to try these issues. In the voir dire, you are talking about?

Mrs. Williams: Yes, sir, but still a potential Juror who had been interviewed and who had read the little booklet that was given out to the tentative [703] Jurors, and when they felt that a person was in Court and had been arrested by a police officer that there was an implication that they must have done something.

The Court: No, nothing is presumed or taken by implication—

Mr. Elrod: I object to that language.

The Court: Why?

Mr. Elrod: Why?

Mr. Elrod: Because you are allowed to take into account your everyday observations and experience.

Mrs. Williams: You don't presume your everyday observations, you know them.

Mr. Elrod: You can presume certain facts based on them. That is what circumstantial evidence is. I presume when I see this guy standing over a guy's dead body with a gun, that he shot him. I presume it and it can be reasonably implied. I object to, "if the evidence in this case leaves upon the minds of this Jury any reasonable doubt—"

That is obviously going into the "all reasonable doubt," instruction.

Mrs. Williams: We are taking the position that this is not a clear criminal case.

[704] Mr. Elrod: No, it is a clear civil case.

Mrs. Williams: No, it is a quasi criminal case, which puts the City on—which burdens the City with a greater degree of proof than any suit for damages, and this is the argument that was advanced once before by Leo Holt, and as long as it will possibly be appealed, let's—

Mr. Elrod: I agree you should.

Mrs. Williams: Yes.

Mr. Elrod: I just say it is contrary to the law in Illinois.

The Court: Your reasonable doubt of guilt, no.

This hasn't got a number on it, so you haven't technically submitted it.

Mrs. Williams: Oh, Judge—

The Court: No, I will keep, as a matter of record the withdrawn ones, the refused, and so on. Maybe we had better mark this with a proper number.

Mrs. Williams: 35.

The Court: All right, 35. 35 is refused.

Mrs. Williams: All right, sir.

The Court: Off the record.

(Whereupon, there was an off the record discussion.)

[705] The Court: This one is one we went over before. That will be given.

Mr. Elrod: Judge, instead of tearing it—

The Court: Do you have one?

Mr. Elrod: Yes.

The Court: Good.

Mr. Elrod: But it is a carbon, and it has a "P-1" down here.

The Court: Number 2, your number 2 reads:

"You are the sole judges of the credibility of witnesses and of the weight to be given to the testimony of each of them. In determining the credit to be given any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias or prejudice he may have, and the reasonableness of this testimony considered in the light of all the evidence in the case. In deciding whether any fact has

been proved, it is proper to consider the number of witnesses testifying on one side or the other as to that fact, but the number of witnesses alone is not conclusive of the testimony if the [706] lesser number is more convincing."

That will be given.

Mrs. Williams: Judge, on that Number 2—

The Court: Yes?

Mrs. Williams: One of those tabled instructions of the Defendants'—may we have another instruction along this line?

"That the number of witnesses—I believe that is one of the—

The Court: You did have one in, and I believe that this is out of I.P.I. You don't think it is slanted one way or the other?

Mr. Elrod: It wasn't intended to be.

The Court: This is I.P.I., right flat out.

Instruction 3:

"In giving these instructions, it is the intention of the Court simply to instruct the jury as to the law applicable to the case, but it is not the intention of the Court in the least degree to give the Jury any opinion as to whether or not the defendants, or any part of them, as a whole are guilty of the offense charged in this case, or to express any opinion as to the weight or sufficiency [707] of the testimony, or as to the credibility of any witness. If you have heard any evidence in this case which the court afterwards struck out, you are to wholly disregard such evidence in arriving at your verdict. From anything the Court has said or done in this case you are not to understand that he has any opinion as to the facts appearing in evidence. It is

the duty and province of the jury to weigh the evidence which has been introduced in this case and to determine what fact, or facts such evidence establishes, and, having done so, to apply to such facts the law, as stated in these instructions."

Mrs. Williams: "Any part of them as a whole".

The Court: I don't like that language.

Mr. Elrod: "Any one of them," can we scratch the words "part," and "as a whole"?

The Court: Let's see. Don't you have one that I read from my file over here that is similar to this or identical to it or would serve the same purpose?

Mrs. Williams: Yes, the one marked good.

[708] "Neither by these instructions, or by any ruling, remark made, attitude, posture, gesture or any other vocal or physical expression does the Court intimate or mean to give, or wish to be understood as giving any opinion as to the guilt or innocence of any defendant, or as to what is a fact or what is not a fact. That is for you to decide from the evidence under these instructions."

All right, that is the one I am going to give.

Mr. Elrod: Here is one, "The Court instructs the Jury—it is my Number 5.

(Continuing) —that the Court is the sole judge of the law in the case, and it becomes the duty of the Jury to follow the law as it is given to it by the Court in his instructions. You have no right to disregard them or to disregard any portion thereof, but you are bound to take the whole of them as they are given to you by the Court and apply them to this case.".

The Court: All right, I will make this—

[709] Mrs. Williams: What are you going to do with it?

The Court: Refused.

Mrs. Williams: Number 3?

The Court: So they don't get co-mingled with the others, will you bury it somewhere?

Number 4—well, now, this number 4 here, I think is what we are after. This one I will give. I think that is as strong a language as you can have. I am marking it "given," right now.

Mr. Elrod: He wanted stronger language and I told him I had one.

The Court: I think 5 is a good instruction.

"Given".

"The Jury is instructed that an attorney has a right to interview a witness for the purpose of learning what testimony the witness will give. The fact that the witness talked to an attorney and told him what he would testify to does not, by itself, reflect adversely on the truth of the testimony of the witness."

Is this the exact language in I.P.I.?

Mr. Chambers: Page 25.

Mr. Elrod: Yes.

[710] The Court: "Given".

Mrs. Williams: I have no objection.

The Court: "Given".

"You are instructed that it is not necessary that the City prove the guilt of any defendant beyond all reasonable doubt. However, it is the burden of the City of Chicago to prove the guilt of each defendant by a clear preponderance of the evidence.

"A fact is proved by a clear preponderance of the evidence when you are clearly satisfied, firmly con-

vinced, and persuaded without reservation, that such fact is more probably true than not true."

Mrs. Williams: If the Court please, I have an objection to the phraseology of this one because it starts out negating what the City must do, and also in the second line from the end, "firmly convinced," they need not be firmly convinced. The law doesn't put that type of impediment in the way of the Defendants for a not guilty verdict.

The Court: We are talking about the burden on the City here.

[711] Mrs. Williams: I know, but—

The Court: There was an attempt made here to distinguish beyond "all reasonable doubt," and "preponderance," to reach a midway point.

Mrs. Williams: I know.

The Court: And it was intended that this should apply to the duty of the City to prove—you have instructions that it isn't necessary for you to make any proof at all of your innocence. Do you have such an instruction?

Mrs. Williams: No.

The Court: You are entitled to one.

Mrs. Williams: I don't have one, at all. I started out with something that sounded like that, but it ended up not quite sounding like it.

Mr. Elrod: This is more or less I.P.I. By that, I mean—

Mrs. Williams: We should change the phraseology to say that it is the burden—

The Court: However, it is the burden of the City to prove the guilt of each defendant by a clear preponderance of the evidence.

Mrs. Williams: But you start out with this reasonable doubt bit.

[712] The Court: You have got a situation here where we are aware of the fact that at least two of these Jurors had a case submitted to them in which the burden of proof was beyond all reasonable doubt. That is in there for the protection of the defendants more than anything else, and I appreciate that it is a negative approach, but certainly it is something that would be proper for you to comment on to the Jury, that they are not required to—

Mrs. Williams: What this is saying, Judge, is unless they—it says they don't have to prove them guilty beyond a reasonable doubt, but they do have to prove them guilty by a preponderance of the evidence and then it goes on to say what is a preponderance of the evidence.

It doesn't show here—you are saying that if they have any reservations in their minds on behalf of the defendants, that is not sufficient.

The Court: Oh—

Mrs. Williams: That is not sufficient to come back with a verdict of not guilty.

Mr. Elrod: Yes, it is.

Mrs. Williams: Well, I am afraid that is what the Jury might be thinking, that the defendants have [713] got to prove that they are not guilty.

Mr. Elrod: Judge, this isn't at all ambiguous. It states that you have to prove it beyond a reasonable doubt.

The Court: I don't see how it could be—without an objection on the part of the Defendant, I don't see how it could be error to delete that. I think it protects the Defendants—

Mr. Elrod: "And persuaded, without reservation," is that what you are thinking about?

The Court: No, the reasonable doubt aspect. I don't like an instruction that comes from the negative vein either, but I don't see how you can avoid the possibility that some of these Jurors will carry over the implications they got in the felony cases they have previously heard.

Mr. Elrod: Or misdemeanor cases. It happens that they did hear felony cases. This "beyond all reasonable doubt" has obtained such—it has become such a well-known expression through the Perry Mason series and other series, that I think it must be shown that this is not that type of case.

I think what Mrs. Williams is concerned about is the definition of "clear preponderance," [714] more than anything else.

The Court: I think that if this instruction were given, you could comment to the Jury that the Defendants don't have to prove a thing, it is up to the City.

Mrs. Williams: I don't see that that is going to help. The spoken word is not going to be as lasting as the written words which will be in that room with them.

The Court: Well—

Mrs. Williams: I don't know. This is my objection to it, if the Court please. I don't want to belabour the point.

The Court: Well, I am going to give it.

Mrs. Williams: I have an objection. I guess it is noted.

The Court: This is on the record. The record will indicate that you take exception to the ruling.

"The Jury is instructed that the fact that persons other than these defendants may or may not have violated any laws or may or may not have been arrested is of no probative value, and should not be considered for any purpose by you in determining the [715] guilt or innocence of these defendants."

Mrs. Williams: I don't know about the probative value of it, but I certainly think that it goes to the very heart of our case to show that the disorder, if any, and the breach of conduct, if any, was not committed by those who were arrested. I think it has a great deal of bearing and weight, and I would take exception to this instruction.

The Court: I don't like the "as to," particularly. The only probative value for any—I am going to give an instruction along this line, because the record is replete with evidence that a Jury may well consider to establish the violation of the law on the part of the so-called spectators and neighbors, and the record is silent as to whether any of them were arrested or not.

Mr. Elrod: Would you prefer "regarding the guilt or innocence"?

The Court: I am going to see if we can correct this. It is short, and it won't take too long to do it over. Since I won't give this one, I will mark it up.

Mr. Elrod: You are making this the Court's instruction?

[716] The Court: No, I can't change it. I am making this suggestion if you want to submit it in that form.

Mr. Elrod: I will tender the instruction as per your suggestion.

The Court: All right. I have deleted the words "probative value," which may be—

Mr. Elrod: May I have this retyped?

Mrs. Williams: If the Court please, we are still objecting to this—

The Court: Yes?

Mrs. Williams: (Continuing) —because it is substantially—

The Court: It is substantially the same as it was before except—

Mrs. Williams: Yes, it does take away our case. There is no doubt but what there was a breach of the peace in the neighborhood, but the breach of the peace was not committed by these Defendants, and the Jury may very well infer from this very instruction that the breach of the peace which was caused on, or which was committed on the part of the Defendants was well sanctioned or was justified—on the part of the spectators was justified, and this [717] is going to tear up a closing argument.

Mr. Elrod: I would object to any closing argument along these lines.

Mrs. Williams: Why?

Mr. Elrod: As to anyone else's guilt or innocence?

The Court: Why? The others weren't arrested.

Mrs. Williams: No, but the fact that the breach of the peace which occurred on the 2nd of August, 1965 was on the part of the spectators and not on the part of the Defendants, this is our whole case.

Mr. Elrod: I would object to that.

The Court: Well, you can certainly comment on the evidence as to what they were doing and so on, and so on, and as to what your people were doing—

Mrs. Williams: In spite of the objection, this is the evidence introduced by the City.

The Court: As far as why didn't they arrest these other people, why didn't they arrest the spectators and so on and so on, it seems to me that by virtue of the way the evidence went in, this will be a question that will bother these Jurors unless it is taken care of.

Mrs. Williams: This is the very thing. I think they should very well be bothered about this [718] situation, why were these people arrested, why were these Defendants arrested when the testimony on the side of the witnesses for the City was that a breach of the conduct that was being committed by others in the vicinity. It goes right back to my same argument that the issue here seems resolved to, is a defendant guilty of disorderly conduct when he is in the presence of another group of persons who commit a crime or a violation.

The Court: The answer is obviously that he is not guilty unless he, too, violated the ordinance.

I am going to give it as—make it the same number.

Now this one, I take it that this is the language and the ordinance.

Mr. Elrod: In part.

The Court: With deletions.

Mr. Elrod: Yes, with deletions as noted by the dots. You couldn't put in, I take it, the amount of the fine—

The Court: No, the ordinance in its entirety is about a page and a half, as I recall.

Mr. Elrod: Yes, it is a long one. Here is the ordinance.

[719] The Court: The only objection I will hear to this is if you feel other elements of the ordinance should be incorporated or the verbiage here is not identical to the verbiage in the ordinance.

Mrs. Williams: I don't think that is in there.

Mr. Chambers: It is in there.

Mr. Elrod: Your girl typed it up.

Mrs. Williams: I don't care whether she did or not.

Well, my objection to this, if the Court please is—I base it on the fact that the Court has indicated that Your Honor will not give an instruction to the effect that the Defendants have a Constitutional right to peacefully assemble, petition the government for redress of their grievances and et cetera. At the same time, they are being informed as to what the ordinance says, they should conversely be informed of their right. When they are being told what the Defendants should not do, they should be told what the Defendants can do.

The Court: This will be given when we—we will get to that one a little later.

Mr. Elrod: Judge, before you get on to the next one—this is 9.

[720] The Court: Put 9 on there.

Mr. Elrod: "P-9".

The Court: "P-9," or "City's 9".

Mr. Elrod: "P" is prosecutor.

The Court: All right.

Mrs. Williams: Oh, good God almighty, this one is interpreting the statute.

The Court: Which one?

Mr. Elrod: She is talking about ten or eleven.

The Court: Eleven?

Mrs. Williams: I defy you to find in I.P.I. any instruction—

The Court: I am not concerned with I.P.I. It is the instruction—let's see.

Mrs. Williams: My goodness, if we are going to start going back to case law, let's quote Cox versus Louisiana.

The Court: No, this I can't give. This is refused.

Mrs. Williams: Now then, if the Court please, there is an instruction in that group of instructions which the Court refused, "If you find by a clear preponderance of the evidence that the Defendants did not—"

[721] Mr. Elrod: I didn't say in this—

The Court: This is not peremptory. However, I think it might be a better instruction if it were indicated on here that each of the Defendants had entered a plea of not guilty. This is the fact. The Jury has to be informed of what the charges are.

Mrs. Williams: What the charges are, that is right. Then, I should have an instruction on the Defendants —how about this, Judge?

> "The fact that the Defendants are charged with the violation of ordinances is no evidence that they are guilty thereof. The making of such a charge is merely the taking of the first step toward trying the question. The Defendants have pleaded not guilty and deny that they have committed the violations charged against them, and this puts upon the City the burden of proving every material fact necessary to constitute the violations."

The Court: Yes.

Mr. Elrod: It is repetitive.

The Court: This instruction will have to inform them of what the City has charged them with.

[722] Mrs. Williams: This is the one we have just corrected. I think it is instruction Number 37, and—

Mr. Elrod: Well, can we rule on this one, first?

The Court: This is just a plain flat out statement of what you are required to prove.

Mr. Elrod: This is a quote from the complaint.

The Court: Yes—well, you don't have the time and place, you don't have the time and place. Is this a material defect? You don't have the 2nd of August. I don't think that it is.

Mrs. Williams: Yes, sir, on the 2nd of August at 35th Street between Lowe and Union, because, otherwise they will feel free to go way back to four o'clock in the afternoon when the Defendants left Buckingham Fountain and went down to City Hall and back to State Street and out to 35th and Lowe, and the Complaint, if it is going to be quoted, must be an accurate quote, and the complaint specifically charges them at 35th Street between Lowe and Union.

The Court: The complaint can be amended at anytime, even after the verdict, to conform with the proof. I don't know how far the City wants to go.

[723] The Complaint in its present form has no hour indicated.

Mrs. Williams: It has the place.

The Court: It has the place at 35th between Lowe and Union.

Mrs. Williams: At 35th between Lowe and Union, that is right.

The Court: And in the present form, it would be limited to proof of what happened at that specific location in that it is completely specific.

I don't know what you intend to do here, and I can't speculate or guess. It is your proof.

Mr. Elrod: I realize I can amend up to and including judgment and even after verdict, but you are asking me to—

The Court: All right.

Mr. Elrod: If I am going to submit this instruction, I have to make my decision. Otherwise I have to put in exactly—

The Court: No, my ruling at this time might be predicated on what the proof is going to be. If you are going to argue to the Jury that they were parading around the block prior to the time they were singing—stopped singing, a violation under [724] the facts, you would have a right to do so. Then you have to—

Mr. Elrod: (Interposing) —amend the complaint.

The Court: I have to have some indication that the complaint is going to be amended. I can't read your mind or indicate to you what you are to do. That is your decision to make, not mine.

I think as the complaint was before it was amended, it merely read, "in the vicinity".

Mr. Elrod: "At or near"—

The Court: (Interposing) "35th and Lowe," was probably broad enough to encompass the entire block, but as it has been changed, "between Lowe and Union on 35th"—

Mr. Elrod: The testimony indicates that at least on three or four occasions they were at 35th and Lowe, singing.

The Court: All right.

Mrs. Williams: But the complaint said 35th Street between Lowe and Union.

Mr. Elrod: Well, we were at 35th Street between Lowe and Union.

The Court: He is saying that they were singing and chanting and so on at that particular place as—

[725] Mr. Elrod: (Interposing) —as 36th Street and Union and—

The Court: On this one, it has on here, "which facts each Defendant denies." Either that or I will have to allow her to use the language in the Complaint and state that the Defendants each deny that they committed disorderly conduct et cetera, et cetera, but certainly this Jury is entitled to know what the complaint says.

Mrs. Williams: Yes, but this still does not say what the complaint says, Judge, because the complaint states that the Defendant did, at 35th Street, between Lowe and Union, make or aid in making an improper noise, riot, and disturbance, breach of the peace or—

Mr. Elrod: (Interposing) —to which claims the Defendants—

The Court: (Continuing) which claims the Defendants deny.

Mr. Elrod: Well, the City claims in its complaint and "which claims the defendants—each of the defendants deny."

The Court: Yes.

Mrs. Williams: "Which claims each of the [726] Defendants deny, is that it?

Mr. Elrod: What? "Which claims that it—

Mrs. Williams: No, I said, "is that it"?

Mr. Elrod: Yes.

Mrs. Williams: "Which claims each of the defendants deny."

The Court: And subject to that—that is your twelve and thirteen—and so we don't get mixed up—

Mrs. Williams: Here, do you want this?

The Court: Yes.

Your next one—now, we are getting back to our pile here, your City's 14.

"The Jury is instructed that on August 2nd, 1965, there was in full force and effect a Municipal Ordi-

nance of the City of Chicago, Section 36-31 which states as follows: 'No parade shall be allowed on any public way, nor shall any open-air public meeting be held in or upon any public way, or upon any ground abutting upon any public way, until a permit in writing therefor shall first be obtained from the department of streets and sanitation . . .'' et cetera, et cetera, end of quote.

[727] Mr. Elrod: Shall I hold this back?

The Court: We might as well face it now.

What are the rest of them?

Mr. Elrod: There are only a couple of more.

The Court: Your fifteen:

"The Court instructs the Jury that if, after hearing all of the evidence presented, it believes by a clear preponderance of the evidence that the defendants did make or aid in making an improper noise, disturbance, breach of the peace, or diversion tending to a breach of peace in a public place within the limits of the City of Chicago, or did collect in a crowd or body for unlawful purposes, or for any purpose, to the annoyance or disturbance of other persons, even though in the exercise of a demonstration in support of their political beliefs and opinions, it is your sworn duty to find the defendants so found guilty of the violation of disorderly conduct as stated in their respective complaints."

Mrs. Williams: All right. Now, Judge—

The Court: Yes?

Mrs. Williams: We have argued and been over this [728] and I think it is four times now, and at each time I said that I objected wholeheartedly. As to their political beliefs and opinions, there is nothing in here about their

politics, nothing in here has been elicited about their political beliefs and disbeliefs, which is taking advantage of a situation that is not before this Jury at this time. It does not correctly state the law as laid down in the ordinance, and it is an enlargement upon the ordinance, and we already have an ordinance on this point, and it is inflammatory.

The Court: Let's face the purpose here. Whether or not these people support or do not support the substance that was indicated by the signs that were being carried, so on and so on, is not something they should consider.

In other words, you may have some people on this Jury who think Ben Willis is the most miserable bird in the world and would agree with the purport of the signs, and probably purpose of the demonstration, to call attention to the fact that they are displeased with Willis, conversely, you may have people on the Jury that think he is a genius. This case shouldn't hinge on whether the [729] people like or dislike Willis, and whether they are for or against segregation et cetera. I don't like this. If we can form an instruction that would not be prejudicial to the City or the Defendants that they shouldn't decide the issues on whether they approve or disapprove of Benjamin Willis—

Mrs. Williams: If the Court please, this has already been covered in this prior discussion. It has already been covered in Plaintiff's Instruction Number 12 and Plaintiff's Instruction Number 13, and that is, the City claims that on August 2nd, 1965, at 35th Street between Lowe and Union Avenue, each of the Defendants did certain things. This point has already been covered.

The only thing that Plaintiff's Instruction Number 15 intends to do is to place within the minds of these Jurors

a subtle type of choosing up of sides, or to subtly place these jurors on the side of the good guys or the side of the bad guys, and this is not the intent of the instruction.

I have repeatedly objected to this instruction because it is a bad instruction. The only good part about it is that it does quote the statute, [730] and it is written that these—that a person who aids—who makes or aids in making an improper noise, disturbance or breach of the peace, or a diversion tending to a breach of the peace within the City of Chicago, or collects in a crowd or body for an unlawful purpose or a purpose to the annoyance or disturbance of other people, creates disorderly conduct. That is the only good thing about this particular instruction, and that has already been stated.

Now, the rest of that from the "even though," is not good law. It is not within the province of this Jury to even consider the exercise of the demonstration in support of political beliefs and opinions. It is not their sworn duty to find the Defendants guilty when they are exercising their political beliefs and opinions. It is bad.

The Court; All right, I will refuse this instruction. We had this proposition to face in the instance at McCormick Place.

Let's go off the record with this.

(Whereupon, there was an off the record discussion.)

The Court: Your 15, I am going to deny it.

[731] Mr. Elrod: May I talk on 15?

The Court: Yes. Isn't that the one I just had?

Mrs. Williams: The political one.

The Court: Yes.

Mr. Elrod: If Your Honor please, I will change the wording to delete the word "political".

Mrs. Williams: No. Then it is redundant, because there is already an instruction on what the disorderly conduct ordinance is, and from the time you start saying "even though," that is wrong.

Mr. Elrod: I am retendering this with the word "political" deleted, and I would like to argue that point.

The Court: Say what you have to say.

Mr. Elrod: Oh, I thought you were looking it over, again.

The Court: I have read it a couple of times.

Mr. Elrod: Yes. The law is clear and that is what the purpose of the instruction is, that the Defendants—if the Jury believes that the Defendants did these acts which is stated here, "by a clear preponderance of the evidence," they are to find them guilty even though, or regardless of what they are doing, and even though they were demonstrating, [732] even though they were walking around in support of their beliefs and opinions, the Jury may feel that it is different to walk around for no purpose at all than to break the law and not to leave when ordered to do so when there could be a diversion tending to a breach of the peace.

I think this instruction would clarify these issues.

Mrs. Williams: I don't think it would.

Mr. Elrod: Even if they are in a demonstration for a good cause, and the Jury finds in fact they did break the law—

Mrs. Williams: If this instruction is given, then the Constitution of the United States might as well go out the window.

Mr. Elrod: Well, the Constitution of the United States says nothing about the breach of the peace.

Mrs. Williams: The Constitution of the State of Illinois and the Constitution of the United States of Amer-

ica gives to these defendants a right to peacefully assemble and you have taken it away with that instruction.

The Court: I don't want to submit to this Jury [733] whether this was a peaceful assembly or not.

Mr. Elrod: Are you denying it?

The Court: I am denying 15.

Mr. Elrod: And 15, as amended?

The Court: Yes.

I have seen part of this one before, and it was keyed to fit a particular situation.

What do you think of this one, Mrs. Williams?

Mrs. Williams: Judge, we have gotten right back to the objection to the one that I presented, and that is that the opening statements are to be considered by the Jury, because certainly in my closing argument I am going to say that the City said that they would prove thus, thus, thus, and so, and they have a right to consider that, but this instruction would take that right away from the Jury, and in my closing argument and in Mr. Elrod's closing argument he is—I am going to comment and draw inferences from the evidence and try to convince the Jury that these are the correct inferences that should be drawn from the evidence—

Mr. Elrod: It doesn't say you can't do that. It says in argument that does not go to contribute a scintilla towards an inference.

[734] The Court: This instruction came into being because I was faced with a situation where there was oodles of extraneous material in the record that I felt the admonitions to disregard when an objection was made weren't adequate, and sometimes no objection was made and there was a lot of garbage in the record that didn't prove or disprove anything material—

Mrs. Williams: But that is not the case here.

The Court: That is not the situation here, as I see it.

Mrs. Williams: The defense couldn't have had less evidence, otherwise they would not have put on any defense at all.

Mr. Elrod: It is not a question of defense, it is evidence. There was oodles of matters brought out, who was arrested, who wasn't arrested, these are all extraneous.

The Court: In that respect, you do have some things here they shouldn't—

Mrs. Williams: Yes, but you already gave an instruction on to disregard who was or who was not arrested. You are going to come back and whittle it [735] down. What are they going to consider in favor of the defense, and what are they entitled to consider in favor of the defense.

Mr. Elrod: All this says, if Your Honor please, is that evidence that was presented or arguments made by either attorney, that is, Larry Chambers, Leo Holt, myself, and Jean Williams—

I'm sorry, you are an attorney.

(Continuing) —but it states that it did not go to the credibility of the witnesses or it did not contribute a scintilla—

Mrs. Williams: I can hear you get up after I have made my closing argument and you will get a second chance to come up and talk and you will say, "The Court will so instruct you that you are not to misinterpret things Counsel said that do—"

The Court: You make an objection and I will correct that for you right then.

Mrs. Williams: You can't erase that out of the minds of the Jurors once it is stated.

Mr. Elrod: It would hurt me more than you.

Mrs. Williams: And the Court so stated, once those things go in, they are in, and if there were some sort of magical erasure that we could use and [736] erase that out of the Jury's minds, fine, but since we can't, it is a bad situation.

The Court: In view of the fact that there are certainly inferences here in the nature of an agreement that existed that should not be a part of the case, I will give this instruction.

The record will indicate—

Mrs. Williams: (Interposing) —my exception.

The Court: Your exception.

Mrs. Williams: Now, I would like to ask this, by way of information, because I am certainly going to allude to the fact that there must have been some reason why these people stopped singing and were not arrested while they were singing, and I am particularly squeamish about giving a correct or an accurate closing argument. I don't like to be guilty of throwing in things that obviously should not go in.

I might get to talking fast and my mind running ahead of me, and it slips out, but I certainly don't like to do it in closing argument, because I believe it leaves a bad taste in the mind of the Jurors.

Off the record.

(Whereupon, there was an off the record discussion.)

[737] The Court: 12 and 13 of the City will be given.

Off the record.

(Whereupon, there was an off the record discussion.)

The Court: Defendant's 36, Mr. Elrod:

"The fact that the Defendants are charged with the violation of ordinances is no evidence that they are guilty thereof. The Defendants have pleaded not guilty and deny that they have committed the violations charged against them. The City has the burden of proving by a clear preponderance of the evidence every material fact necessary to constitute the violations."

This is covered in part by 12 and 13. This is one we modified.

Mr. Elrod: But 12 and 13 state we have—

Mrs. Williams: In a negative sort of way.

Mr. Elrod: I don't think it is negative.

The Court: I am going to give it. It won't prejudice anyone, I don't believe.

This is on the parade, City's 14.

Mr. Elrod: You said to hold that.

The Court: Yes. All right, Defendant's Number [738] 25, I think we have covered the burden of proving every material allegation, "the burden of proof never shifts." I am denying that.

Mrs. Williams: Well that—

The Court: You have your exception.

Here is one for your denied pile. This is the one on preponderance of evidence. I think I accepted one that covers the same thing and it omits the "evenly balanced". This I am denying because it is already covered by specific I.P.I.

"The Court instructs the Jury that a Defendant cannot be found guilty upon mere suspicion, conjecture, or speculation on the part of the Jury."

Are you objecting to this?

Mr. Elrod: Yes.

The Court: Why?

Mr. Elrod: Because it states clearly in the City's—the Plaintiff's instruction on burden of proof, Number 8, that it is the burden of the City of Chicago to prove the guilt of each defendant by a clear preponderance of the evidence. A fact is proved by clear preponderance of the evidence when you are clearly satisfied, firmly convinced, and [739] persuaded without reservation, that such fact is more probably true than not true," and that is the law.

Mrs. Williams: We are off of that one.

The Court: Yes. The question now is whether the substance of your 19 is covered by another instruction.

Mr. Elrod: Now, where it states, "cannot be found guilty upon mere suspicion, conjecture, or speculation," I submit to your Honor that where you have speculation and you have conjecture and you have mere suspicion, all of these facts taken into consideration might create a clear preponderance of the evidence.

Mrs. Williams: Never.

The Court: I can't buy that.

Mrs. Williams: Never does speculation, conjecture, and suspicion make a clear preponderance of the evidence, never. It has got to be factual.

Mr. Elrod: Facts are based upon—

The Court: No, I think this is thoroughly covered. I am going to give it anyhow.

Mr. Elrod: I think it is redundant. It is covered.

[740] The Court: It may have been, but the language is stronger.

All right, I am going to deny your Constitutional—

Mrs. Williams: If the Court please, may the original statement which I made in support of the instruction number—

The Court: (Interposing) —16, 17, 9—wait a minute —9—.

Mrs. Williams: 9, 16, 17—

The Court: 9, 16, and 17—

Mrs. Williams: (Continuing) —which I made in support of 9, 16 and 17, I think there is one more, let's see. It was an instruction regarding the First Amendment—

The Court: Here it is.

Mrs. Williams: (Continuing) —and the 14th Amendment.

The Court: It is Number 4.

Mrs. Williams: Number 4?

The Court: Yes.

Mrs. Williams: May those statements which I made in support of the Court's giving those instructions be incorporated—

[741] The Court: (Interposing) —to support your objections at the present time without having to be repeated.

Mrs. Williams: Yes.

The Court: The record will so indicate.

Mrs. Williams: And the Court's ruling on this is that the Constitutional question is not a proper matter for the Court—for the Jury to consider.

The Court: That is correct.

Mrs. Williams: Now, off the record.

(Whereupon, there was an off the record discussion.)

The Court: "The Jury are instructed that the City of Chicago must prove its case by a preponderance or greater weight of evidence; therefore, if the evidence in this case preponderates in favor of the defendant or any one of them, or if the evidence fails to preponderate in favor of the City, or if you

are unable to say on which side is the greater weight of evidence, then you should find the issues for the defendant or any one of them and return a verdict of not guilty."

[742] That was refused because it is preemptory. There have been no preemptories that have been given, are there?

Mrs. Williams: Yes.

Mr. Elrod: Yes, on behalf of the Defendant.

Mrs. Williams: There were none on behalf of the Defendants.

Mr. Elrod: The one he just read—

Mrs. Williams: That is the one he just gave back.

Mr. Elrod: No, the one on mere conjecture, speculation and something else.

Mrs. Williams: It doesn't say, "then you should find the defendants not guilty".

The Court: On this Municipal Ordinance of the City of Chicago, City's 14:

"The Jury is instructed that on August 2nd, 1965, there was in full force and effect a Municipal Ordinance of the City of Chicago, Section 36-31 which states as follows: 'No parade shall be allowed on any public way nor shall any open-air public meeting be held in or upon any public way or upon any ground abutting upon any public way until a [743] permit in writing therefore shall first be obtained from the department of streets and sanitation ... .'"

Mrs. Williams: Now, if the Court please, I would like to state this:

This places these Defendants and every other group of persons participating in a picket line of any kind in a position of violating the law, and I submit that

wasn't intended by this ordinance. It certainly is not the law in the State of Illinois and it, again, is not the law insofar as the Constitution of Illinois and of the United States is concerned.

This instruction presupposes that every person who protests peacefully must have a permit to do so, and if that is the case, I again repeat that the Constitution of the State of Illinois and the United States has been visicated by the City Counsel of Chicago.

Mr. Elrod: Judge, I have an opinion that I could argue at this time, written by William Parsons who is an assistant corporation counsel, who cites much law. I think he is now a federal judge in the Northern District of Illinois. It states [744] that our ordinance, as it was amended at that time, calling for a parade permit and not leaving any discretion on behalf of the City of Chicago that requires a parade permit, and where the City has to issue a parade permit under those instances and those circumstances, unless it is shown that the parade or procession is for an unlawful purpose or would tend to cause a riot or unnecessarily interfere with traffic, that this is a Constitutional ordinance. The reasons are obvious regardless of the cause, be it for Jehovah's Witnesses, be it for firing Ben Willis, be it for no segregation of the education, or be it for cutting down trees. Regardless of the cause the police—the City of Chicago should be informed of the fact that there will be a parade, a procession, so that proper police protection can be afforded to the marchers, afforded to the motorists, and et cetera, et cetera.

Mrs. Williams: Well, et cetera, et cetera, is covered by Wallace versus Alabama, which is a Supreme Court ruling.

The Court: You have made an offer of proof?

Mrs. Williams: No, that does not go to the question of whether the parade permits constitutionally [745] apply in any particular case, which is not in the province of the Jury and would be put in the province of the Jury by tendering—

Mr. Elrod: All ordinances of the City of Chicago are presumed valid.

The Court: Just a minute. One of the charges here was unlawful assembly—

Mrs. Williams: No, no, but not under the parade ordinance. No, not that it was an unlawful assembly; that they collected in a crowd or body for an unlawful purpose.

The Court: If it is unlawful for them to parade without a permit, it will be necessary for them to be instructed that such an ordinance existed. It is in the record that there was no permit—

Mrs. Williams: All right. Then the Court has decided that these people were parading rather than—this is a matter which, I submit, has been taken away from the Jury and if any one fact is taken away from the Jury, then the value of the Jury process is completely lost to these Defendants.

It should be within the province of the Jury to determine whether or not this was a parade or whether or not it was a peaceful assembly to [746] seek redress of their grievances, and I don't see—I don't see how they can determine whether or not it was a parade or a peaceful assembly if they don't have any law telling them.

Mr. Elrod: I don't see the difference between a peaceful assembly and a parade. I think they are one and the same.

Mrs. Williams: This is what you have done. You have usurped the province of the Jury by saying what you think. It is up to the Jury to determine whether it is or not.

Mr. Elrod: You have said what you think.

The Court: Well, I think it is probably a matter of law, under the circumstances here. There is no dispute that these people did gather at a certain place and did march to a certain place, and if you get into the semantics of what is a parade or what is not a parade, whether it is an assembly or meeting, et cetera, et cetera, I don't think this is a question for the Jury in this case.

Mrs. Williams: Wallace versus Alabama—

The Court: I don't think the Constitution gives you the right under any circumstances—now "any" probably isn't the word I should be using—under [747] all circumstances to do what was done in this instance.

Mrs. Williams: All right, but is this not for the Jury to determine whether or not what they did in this instance was a situation which was legal by virtue of the Constitution or legal by virtue of this ordinance. I remember this very vividly, if the Court please, in Selma, Alabama, when Governor Wallace stated that when these people, led by Dr. Martin Luther King could not parade, could not go to the courthouse in Selma, Alabama, because they had not obtained a permit so to do.

The Court stated that the Constitution gives to all people the right to seek a redress of their grievances from their government, and this is a right that cannot be taken away, and they must have this right, and the Court went so far as to say that not only must they have this right, but it is the duty of the State to protect them while they exercise that right.

The Court: Very well. The Constitution also provides for rights for other people other than demonstrators and paraders.

Mrs. Williams: Absolutely.

[748] The Court: And this case is unique. I now of no case where a demonstration was conducted in a residential neighborhood.

Mrs. Williams: In Selma, Alabama—

The Court: Contrary to around a courthouse, a place of business or in a park, et cetera, et cetera.

Mrs. Williams: Wallace versus—

The Court: I am holding for your record, that the Constitution does not protect this demonstration in this area on that date, and that the—

Mrs. Williams: If the Court please, this very instruction has found the Defendants guilty, because I stipulated that we did not have a permit, and this one instruction is all that they need to be given, because this instruction says, "If you find that they did not have a permit to march, then they were in violation of the law," and that is all there is to it, they are guilty.

The Court: I am afraid that is the law. I don't know what the Jury is going to do.

Mrs. Williams: The Jury has no other alternative but to follow that instruction, because there is no dispute on that. There is no dispute, whatsoever, [749] whether they did have or did not have a permit to parade. We stipulated and agreed that they did not have a permit, so no other instruction needs to be given, because that one instruction tells them that these people did not have a permit to parade, and they are charged with, it is un-

lawful for them to parade without a permit, and they are guilty of disorderly conduct.

That is the only inference to be drawn. At that point, the Corporation Counsel should move for a directed verdict, and therefore, it ought to be granted.

The Court: Now, we are getting into quasi, or criminal and I don't think in a quasi criminal matter I don't have the right to instruct them—

Mrs. Williams: They are accused of collecting in a crowd or body for an unlawful purpose. This very instruction has taken the whole matter out of the hands of the Jury. The Jury has nothing to decide, Judge. Therein lies the case. This one instruction tells them, "The Court instructs you that these Defendants are guilty.

The Court: As to one count—as to one of the complaints—

[750] Mr. Elrod: Judge, you can't get away from the law.

The Court: I can't submit to the Jury the Constitutionality of the ordinance.

Mrs. Williams: But you don't have to submit to the Jury the fact that every person who marches must have a permit. This does not have to be submitted. I submit to Your Honor that labor unions would never be able to call a picket line if that is the case.

The firemen at City Hall should have been arrested. They had no right to collect in a crowd or body to march to the Mayor. No one has that right. If this instruction is given, it has said to everyone in the City of Chicago, "Nobody in the City of Chicago has a right to peacefully assemble and seek redress for their grievances, no one, because there is an ordinance which says you

cannot collect in a group and march anywhere. You cannot have an open air meeting, you cannot do anything and go anywhere," and this is what this says.

The Court: All right, let's go off the record, again. [751] (Whereupon, there was an off the record discussion.)

The Court: If the City doesn't want to withdraw it, I will give it.

Mrs. Williams: Are you going to penalize these Defendants to the extent of doing that which the City Counsel should have done, and that is to recognize the Constitutional rights of these defendants?

The defendants are not wealthy people.

The Court: To deny this instruction would be tantamount to determining that this ordinance was unconstitutional.

Mrs. Williams: No, sir, let the City—

The Court: And I believe the ordinance, in its entirety has sufficient safeguards to be Constitutional.

Mrs. Williams: We are not maintaining this is unconstitutional.

The Court: The record will indicate your exception, and the instruction will be given.

Mrs. Williams: You are putting on these Defendants the burden which the City Counsel should have done. There is no question but what they should have been found guilty, now, so that if the Defendants can [752] get any relief, they have got to appeal.

Now, an appeal should be taken to determine whether or not this ordinance is valid or invalid. The City has sure got more money than anyone or all five of these Defendants, combined.

Let the City take it up to determine whether it is Constitutional or not, but every lawyer here has wasted

two weeks here, because they have to find that the Defendants are guilty on Count 1 and Count 2.

The Court: Do you have these three instructions that you were going to let Mrs. Williams submit, typed up? She didn't want to submit them.

Mr. Elrod: Yes.

The Court: I am going, on my own motion to submit them to the Jury.

Mr. Elrod: I offer these.

The Court: Well, let's get these out, first.

This is going to be the Court's I, the Court's number 1, Number 2,—this is my own instruction I am going to give.

Now, you have some more here—

Mr. Elrod: Yes.

The Court: "The Court instructs the Jury that the rights of freedom of speech and [753] assembly, guaranteed to all persons in the United States by the Constitution of the United States of America and the State of Illinois are not such absolute and fundamental rights that would permit an individual or individuals, collectively, in the exercise of these guarantees to demonstrate in a public place within the confines of the City of Chicago in a manner that emitted an improper noise, riot, disturbance, breach of the peace, or diversion tending to a breach of the peace, contrary to the ordinance on disorderly conduct of the said municipality; or to collect in a crowd or body for an unlawful purpose, to the annoyance or disturbance of other persons contrary to the ordinance on disorderly conduct of the said municipality."

That will not be given, in view of the fact that we are not instructing on the Constitution.

Denied.

Mr. Elrod: To which the City objects.

[754] The Court: The next one:

"The Jury is instructed that it is not within its province to determine the Constitutionality of the disorderly conduct ordinance of the City of Chicago, but merely to determine the facts from all of the evidence presented and the guilt or innocence of the Defendants."

That is a proper statement of the law, but it will be denied, because it is not an issue to be submitted to the Jury, and I hope it doesn't enter into the argument.

Mr. Elrod: To which the City takes exception.

The Court: Very well.

Mrs. Williams: Why don't you quit while you are ahead. You have got a guilty verdict.

The Court: I hope you haven't—

"The Court instructs the Jury that the number of witnesses does not necessarily determine the weight of the evidence in any case and the Jury should take into consideration all the evidence in the case and should consider it all together and determine from all the evidence in the case and from all of [755] the evidence in the case and from all of the circumstances proven on the trial as to the weight of the evidence, and return a verdict, accordingly."

(Whereupon, this matter was continued until Friday morning, November 12th, at ten o'clock, a.m.)

* * *

[758] The Court: The City may proceed.

CLOSING ARGUMENT BY MR. CHAMBERS.

Your Honor, Attorney Williams, ladies and gentlemen of the Jury:

First of all, we wish to thank you for your patience and your indulgence throughout this trial. We did not wish for this trial to extend for this period of time. This is a very simple case, but it is a very important case.

You heard at the outset what the City would intend to prove.

Your Honor, may I have a copy of one of the complaints?

There are two charges of disorderly conduct against each one of the defendants, two charges of disorderly conduct. You heard my associate, Mr. Elrod, state that the City would prove that each and every one of these Defendants, as charged, did make or aid in making an improper noise, riot, disturbance, breach of the peace, or diversion tending to a breach of the peace within the limits of the City of Chicago.

That, ladies and gentlemen is one charge.

[759] You heard Mr. Elrod further state that the City would prove, as charged in the complaint, that each one of the Defendants did collect in a crowd or body for unlawful purposes or for purposes to the annoyance or disturbance of other persons.

Ladies and gentlemen, I believe that the City has proved through the testimony that has been elicited from the stand—you have heard the testimony of Mr. Larmon, and the Defense stipulated to the fact that there was no parade permit nor application for a parade permit.

You heard Lieutenant Hougeson testify that the area within 35th and Lowe down to 36th and Lowe, 36th

and Union to 35th and Union is primarily a residential area. Lieutenant Hougeson also testified that there were approximately one hundred police officers there.

You heard Lieutenant Hougeson further testify that he observed, himself—not that it has anything to do with this case, that approximately two persons were playing musical instruments, but remember, someone playing musical instruments has nothing to do with the charges in this case. Musical instruments—he stated that he saw, I [760] believe, a trumpet and a cymbal. You heard him further testify that in this area there were approximately twelve hundred persons at nine-twenty or nine-thirty, whatever that time was.

You heard Sergeant Golden testify to the conditions in that area. You heard four police officers testify as to what conditions were on the corner.

Ladies and gentlemen, you were not there, and you heard inferences that we were there. We tried to give you a picture of what was going on in this area, and in order to do so, the police officers who testified from the various corners, we felt, was the best way to give you a bird's eye view of what was happening in this community.

Now, these men were stationed on different corners and they saw different things in this area. Certainly there was some variance in the testimony, but substantially you have heard the testimony from both sides. There has been no great deviation as far as the facts are concerned.

You heard Sergeant Golden testify that he observed spectators on the corner of 35th and Lowe, that he saw spectators and neighbors. You heard [761] him testify that he heard the shouting of vile names. You also heard

him testify that he heard Commander Pierson. He heard him request the Defendants to leave because of what he considered a dangerous situation in this area.

You heard him also testify that he was there and he sought to push some of the spectators back, after giving them warnings with his hands. You heard him state that he was there aiding, with other police officers to maintain the peace and to protect the marchers.

You heard Sergeant Fuhry testify as to the conditions in this area. You heard him testify that he closed taverns in this area. Certainly you can see the reason why, because of the conditions that were existing.

You heard two other witnesses testify, two other police officers who were on the corners.

You heard Sergeant Hogan. He testified that he saw signs. You heard him testify that he saw the Mayor—saw the marchers with signs saying, "Willis Must Go; Daley, Fire Willis."

You heard him also state—I don't know what this has to do with the case, it really doesn't [762] have anything to do with it.

There were sprinklers in the area, in the neighborhood on the lawns or on the sidewalk, or wherever they were. These things, ladies and gentlemen have nothing to do with the charges in this case.

You heard Officer Green testify on the opening statement—the defense counsel stated that these people were arrested because they came into an area. I don't wish to misquote Counsel for the Defense, but I believe she stated that the only reason these people were arrested was because they were black men in a white area. Do you really believe this?

You heard Officer Green testify that there were white and Negro marchers in this group, and you also heard one of the Defendants, Dick Gregory, himself, testify that this was an interracial group marching in this area, and it was.

You heard Commander Pierson testify an officer for 33 years on the Chicago Police Force, state that they were there to protect life and property and to preserve the peace of all of the citizens in this area. You heard him further [763] testify that certain children who came into this area with signs were chased from one side of the street to the other side of the street when they sought to get in front of the marchers.

You heard Lieutenant Hougeson testify that at about 9:05, he was using a bullhorn warning the crowd to keep back.

You heard Commander Pierson testify that about five or six times he gave the Defendants warnings to leave the area. There may have been some variance in the testimony, whether it was three or four times, from some of the other officers that testified in this case, but you have to get a proper perspective of what was going on on August 2nd, 1965, in an area in which there were near riotous conditions, a great deal of excitement.

Wouldn't you expect there to be some little variance as to how many times a warning had been given or as to how many people had gathered in this area?

You heard the Defendant, Dick Gregory, testify that they marched to City Hall. You heard him testify to his observing the neighborhood [764] people. You heard him testify that he saw the signs. He mentioned a sign, "We love our Mayor." There was some testimony about a ten piece band. Gee, I don't think there was a ten piece band

there. There was no evidence in this case that there was anything like a ten piece band there. Dick Gregory, himself, said he saw a drum and trumpet, or some other musical instrument, but the Defendant, Dick Gregory, didn't testify that he saw a ten piece band, but that has nothing to do, at all, with the charges here.

You heard him testify that Commander Pierson would let them march two more times. You heard Dick Gregory state, himself, that there was a great deal of confusion here, and there was. You heard him state that he did not hear anyone request the spectators to stop yelling.

Ladies and gentlemen, I believe him when he said he did not hear him, but this does not mean that the spectators were not requested to stop yelling, or whatever it was that they were doing. As I stated before, ladies and gentlemen, there is no substantial disagreement as to most of the facts in this case. There was no parade [765] permit. They were allowed to march, but what is a commander to do? He is also a human being as well as an officer of the Chicago Police Department. You heard the testimony that there was singing and chanting in this area.

You heard Commander Pierson say, you heard him state that conditions were getting worse in this area, that he requested the individuals to leave. Are the people who live in this area, are they required to lay aside their everyday living, are they required to interrupt their own activities for the convenience of a small group of individuals who come here?

Now ladies and gentlemen, we don't want you to get the wrong impression. They were not arrested in this area because they were black, and they were not arrested in this area because they were marching, not

merely because they were marching, because the question will arise as to do they have a right to march in this neighborhood, and I will answer that question.

Yes, they have a right to march there, but under proper conditions. Not under any conditions, and these were not ordinary conditions. I [766] am sure that you realize that these were not ordinary conditions.

Ladies and gentlemen the function of the police department is to protect life, property, and to maintain the peace. Sometimes you have to weigh what is of the greater interest. What is of the greater interest here, to allow these people to keep marching and let there be bloodshed? Certainly there was that probability.

The Commander did what he thought was in his best judgment, his best judgment. I will ask you this: Put yourself in the place of one of the marchers. If you were told to leave the area by a high official of the police department, under those circumstances and conditions, would you have stayed? Would you have stayed?

You heard testimony to the fact that there was some control, up to a point, but this arose gradually. At a certain point the Commander sought to do what he thought was right.

The City believes that after several and repeated warnings, and the fact that there were people who did leave under escort—they were told that they would be escorted out of the area, [767] safely. You heard the testimony. Several did leave, three or four. Then why, why would they have stayed in spite of the conditions? Why?

There were riotous conditions here. The Commander did not have to wait until there was an actual riot to make an arrest. You heard the testimony. Approximately

one hundred police officers were there. The spectators numbered anywhere from twelve hundred up to two thousand. This was an approximation. No one actually took a head count.

Ladies and gentlemen, I would like to give you an example of the action the Commander took which we believe was a proper action, there was no alternative. If you have an eyelash that gets into your eye, a wild eyelash, do you remove your eyeball or do you remove the eyelash?

The peace of the people is a fundamental function in our society. We need not speculate or guess as to what the result would have been had the Commander not taken the action that he took. Persons may express their feelings on public matters, but actions by any group of persons that are calculated to provoke any other group of persons [768] cannot be sanctioned.

Ladies and gentlemen, the City believes that we have proven—once again they are charged with two charges each, of disorderly conduct.

We believe by the testimony that came from that witness stand that the City has proven that each and every Defendant here charged with 193-1 of the Municipal Code of the City of Chicago: "All persons who shall make, aid, or assist in making an improper noise, riot, breach of the peace, or a diversion tending to a breach of the peace within the limits of the City of Chicago, and that all persons who shall collect in bodies or crowds for an unlawful purpose or for any purpose to the annoyance and disturbance of other persons, they are guilty of disorderly conduct."

Take this with you when you go to deliberate. Yes, those who marched in this area have rights, but there

is no one's right in this community that is that absolute, that it exceeds the rights of others. Those neighborhood people, they had certain rights, did they not? Let's not forget that other people have rights. Where can we [769] go? Where can we go to be secure in our persons, to be secure in our homes? Where can we go?

Ladies and gentlemen, the City believes that we have proven our case by a clear preponderance of the evidence, that each and every defendant is guilty on two counts of disorderly conduct.

They had an opportunity to leave, they were asked to leave, and when they refused to leave, they violated the law, they violated the law.

On August 2nd, the marchers went to City Hall and then they took a rest. They later marched to 35th and Lowe and made themselves a pest.

We, too, ladies and gentlemen of the Jury want a fair trial for these Defendants, but can't you see that the Commander didn't have any other alternative?

The City believes that we have proved our case, as stated before, ladies and gentlemen.

We wish to again thank you for your indulgence and patience in this case, and we are asking you to bring back a verdict on two counts of disorderly conduct, of guilty as to each and every defendant.

Thank you.

[770] CLOSING ARGUMENT BY MRS. WILLIAMS.

Your Honor, Mr. Corporation Counsel, ladies and gentlemen of the Jury:

At the commencement of this trial, if you will recall, I stated that the trial of this case is very similar to a drama, a drama which unfolds from the witness stand bit

by bit, piece by piece, as each witness plays his part. In other words, I am reminded of the Shakespearean statement, "All the world is a stage, each has his part to play." And each witness, each attorney has played the role in this drama. I submit, to the best of our individual ability.

Now, we come to the point of this drama where the Jury must now take over and play their part, and with that analogy, I would like to remind you of the theory of the Defense insofar as this case is concerned.

One thousand, nine hundred and sixty-five years ago, we believe and we contend there was a case very similar to this in which a Defendant was brought before a judge and he asked, "Who are the accusers?"

[771] The accusers in this instance are the City of Chicago. The Judge in this case, in this analogy, will be you twelve Jurors, and we submit to you that by a verdict of not guilty, you too will say, "I wash my hands of this blood, I find these Defendants not guilty because of any mob recation. I find these Defendants had a right to peacefully assemble on the 2nd day of August, 1965. They had a right to carry the printed word with a sign or signs, and they had a right to freedom of speech by way of song when they sang, "We shall overcome some day."

It is submitted to you ladies and gentlemen of the Jury that these defendants did not make or aid in making any riot, disturbance or diversion of the peace tending to a breach of conduct when they marched toward 35th and Lowe Street and circled that block and went around that block and around that block conveying with their signs and with their songs, and with their live, human bodies, the message that we protest in the

Land of Lincoln, in the home of the free, land of the brave, segregated schools.

[772] We submit to you that these Defendants did not commit a breach of the disorderly conduct statute by gathering in a crowd or a body for unlawful purposes, that purpose being to parade without a permit.

We submit to you, instead, these Defendants only sought at that time, August 2nd, 1965, to peacefully assemble and seek redress of their grievances from their government.

Would you, by a verdict of guilty, deny to these Defendants and those in sympathy with them that right? The City contends that because these Defendants marched in the area of 35th and Lowe, and because a mob came out and said, "We don't like this, go home,"—and I submit to you that they were not all neighbors. The police officer who did not lie, told you that he recognized some people in the group from as far away as a mile. Now, I recognize the broad concept of "neighbor". We are all truly neighbors, but in the light of what the City would have you believe, then Dick Gregory, Gean Gregory, William Dixon, Howard Barber, James Gant, were also neighbors. So then, what was the situation we [773] had in that area of 35th and Lowe on August the 22nd, 1965? Merely one group of neighbors attempting to tell another group of neighbors how they felt about a given situation, and the Defense submits to you this is no crime, this is no violation, this is the American way.

I may not agree with what you say, but the American way is to defend until death your right to say it.

In viewing this case in the light that the defense sees it, after these Defendants had presented their live, breathing bodies at 35th and Lowe Street, they, too, were

stoned, they, too, from the evidence on that witness stand, were spat upon, and from the evidence presented from that witness stand by the police officers as well as by the Defense witness, they said, "Father forgive them, for they know not what they do." They did not retaliate, they did not throw stones back at them, they did not spit back at them, they continued to exercise what they believed was their right as an American citizen, to peacefully assemble and convey their beliefs to their neighbors. And as they continued, in [774] their presence, on August the 2nd, 1965, in that area, again they gave to their neighbors that which their neighbors refused to give them, respect. They gave their neighbors respect of their views when they reached that corner of 35th and Lowe, and as the evidence shows from that witness stand, they respected their neighbors right to march, too, and continued to walk, not into their neighbors, not to do their neighbors harm, not to breach conduct, not to do anything disorderly, but in fact, to be orderly, avoid any breach of the peace, and walk away from that which might cause disorder.

There has been testimony from the witness stand, uncontradicted, because it was impossible for these Defendants to know, but there has been testimony that there was a wake in progress at 37th and Lowe, and that these Defendants had the audacity to walk into the area of a wake. But there was also evidence that even without the knowledge that there was a dead body revered by a grieving family which should be respected, at 37th and Lowe, these Defendants made no sound, so say the witnesses for the City. So, if there was no [775] noise, as of the City's witnesses, who then made the noise, who then breached the conduct? The spectators.

And on this evidence the City asks you to find these Defendants guilty, not because they were noisy, not because they were singing and chanting, but because as witness after witness after witness after witness said, "Your presence in this area is causing near riotous conditions.

In the New York Harbor, at Bedlow Island, stands the Statute of Liberty, a magnificent old lady who raises a torch in her hand and says, "Give me your tired, your poor, your hungry masses, yearning to be free." And up from the bowels of Africa, down the Ganges River and across the Amazon came the forefathers of every black American citizen, yearning to be free, yearning for the right to do as these Defendants sought to do August 2nd, 1965, to seek redress of their grievances from their government, symbolized by the Mayor, who is the Mayor on a full-time, twenty-four hour a day basis.

The Corporation Counsel states that a small group of individuals cannot be allowed to do these things that occurred or that they tell [776] you occurred on August 2nd, 1965, at 35th and Lowe.

Just a small group of people, the evidence says fifty-five or sixty at the most. On the other hand, the spectators, a thousand to twelve hundred in number, and they, the City seeks to tell you that this little, small group and their theories about their rights to do thus and so should not be considered? What should be considered as you deliberate on your verdict in this case is the mob of one thousand to one thousand, two hundred people from whom came the words, "I wish I were an Alabama Trooper," as the evidence said, "That is what I would really like to be, because if I were an Alabama Trooper, I could kill the nigger, legally."

And on that theory, by that line of reasoning, that group of one thousand to one thousand, two hundred people might very well have their wish if, in fact, the contention of the City were true, and if, in fact, that contention of the City were true, then that magnificent lady standing on that pedestal in New York Harbor may as well climb down from that pedestal, blow out her torch and hang her head in shame. This [777] is not the American way.

The City Attorney states and urges upon you that when these Defendants arrived at 35th Street and the alley between Union and Lowe, that they were treated nicely, they were told that, "If you leave, we will guarantee you safe conduct out of the area." The Corporation Counsel has just stated that these Defendants had a right to march in that area, he told you that. He also just told you that had they left, had they accepted the invitation to leave where they believe they had a right to be, Commander Pierson, he repeatedly stated they would be granted safe conduct out. In fact he states three of those were granted safe conduct out.

Now, let us examine that theory. If, in fact, as the City has already admitted, these Defendants had a right to be where they were, they had a right to march, they had a right to carry their signs, they had a right to come down 35th Street and Lowe singing, they had a right to march around the area. If, in fact, this is the truth, then the unlawful purpose or purposes which they are charged with, gathering in a crowd or a [778] body was not the purpose of parading without a permit in violation of an ordinance, because the City has said they had a right, and they would not have been arrested even without a parade permit. So therefore, I urge upon you, be not deceived. Justice should not be mocked.

These Defendants are not accused, in actuality, of gathering in a crowd or a body for the unlawful purpose of parading without a permit, as they will seek to make you believe, now, on the Second of August, 1965. That never occurred to them because each of the police officers sitting up there on that witness stand did not one time tell you they asked, "Did you have a parade permit?" They didn't tell you that. They didn't ask them. They didn't know whether they had a parade permit or not.

If you believe the evidence that came from that witness stand, they were arrested because someone interpreted there was a near riotous condition at 35th Street between Union and Lowe. If this is true, then if you are in my company and I commit a crime because I do not like your name, I do not like the color of your tie, I do not like [779] the slant of your eyes, you are guilty of disorderly conduct.

Again I submit to you, you as individual Jurors are not asked to leave your likes and your dislikes, your experiences and so forth outside the jury room, but you are asked, you are requested, you have sworn that you would grant to each of these defendants a fair and an impartial trial, regardless of the color of their skin. Dislike me, if you must, because I demonstrate, because I protest, because I say we shall overcome. Disagree with me if you must, because you believe that demonstrating, protesting, is not the way to do that which this group of Defendants sought to do, but do not deny me, as an American, my right to do it.

We thank you for your attention, we thank you for the part that you have contributed to aiding us in obtaining a trial by a Jury of our Peers in the true American tradition.

We now submit to you that from time to time during the course of this trial, Counsel for the Defense, the Defendants, and even some of the Corporation Counsels have laughed, have found [780] some portions of the testimony or the things said or the things done, funny. But we tell you with all sincerity that sometimes it is better to laugh to keep from crying. Sometimes it is better to gaze into what will be the cosmic past tense someday, and hold onto the belief that this Jury, this day will return a verdict of not guilty as to each of these five Defendants so that we shall leave this Courtroom door saying, "We have overcome today."

Deep in our hearts we did believe, we would overcome, today.

Thank you.

CLOSING ARGUMENT BY MR. ELROD.

If Your Honor please, Counsel, ladies and gentlemen:

Again, I want to repeat to you that this is not a real difficult case. You have been here, some of you, two weeks. I know you have been on jury service longer than two weeks, and it was not the Defendant's intention nor was it the City's intention to keep you here.

There has been evidence that the attorneys, [781] some of the attorneys for both sides were present on August 2nd, 1965. When you took your oath as Jurors, you were questioned as Jurors, you stated that none of you were there. You were asked these questions. You stated that none of you were there on August 2nd. It was important to show you what existed on that date on that location and the City felt that it was necessary to have a person that was at the corner of 35th and Lowe, at the corner of 36th and Lowe, at the corner of 36th and Union and

at the corner of 35th and Union, and someone that marched with this crowd so that they could tell you and so that you could know and that you can understand what occurred on August 2nd, 1965.

And what did occur? First of all, we know from the testimony and we know by stipulation that there was no permit to parade. Now, Counsel states that this is not why they were arrested. Well, perhaps this is true. We do know that they did start at Buckingham Fountain, and we do know that they did not have a permit to parade. Now, a lot of things happened that night, four o'clock to nine-thirty. What becomes more relevant is what happened in that five hour stage.

[782] They came into an area, and as the testimony is clear, it is primarily a residential area, an area, as the testimony is clear again, where the Mayor of the City of Chicago lives. He lives in a house on Lowe Avenue, 3536 South Lowe Avenue. He does not live on Union, he does not live on 36th Street, 37th Street or 35th Street. He lives at one house at one location, but these people came in to talk or to protest or to show their grievances against the Mayor of the City of Chicago, yet they walked around—they didn't stay in front of his house. The testimony is clear about that.

Did they have a right? My associate, Mr. Chambers, said they had a right to be there under proper conditions, under proper conditions, not that they just had an automatic right to be there.

There are various freedoms, ladies and gentlemen. There is freedom of speech, ladies and gentlemen, yet you can't slander anybody.

There is freedom of speech, yes, yet you can't run into a crowded theatre and yell "fire," because that would endanger the lives of others.

[783] As the Corporation Counsel stated, we didn't just write this law of disorderly conduct. We didn't write it August 1st, nor did we write it November 1st when this case started trial. This law was written years ago. It is not important when it was written, but this law states that it was against the law to breach the peace or to have a diversion that would tend to breach the peace. That is the law. That is what you have to determine, did these Defendants do this.

Now, is that a good law? Did these Defendants do those acts? Did they create a diversion that would tend to a breach of the peace? Did they make or aid in making an improper noise, riot, disturbance, breach of the peace? That is what you are to determine. You are to determine, also the part of this law charged by the City, did they collect any crowd or body for an unlawful purpose, or for any purpose to the annoyance or disturbance of other persons.

We didn't just write that portion of the law. It was written many, many years ago. You are to determine by the fact and evidence you heard from the witnesses, did these Defendants violate [784] that law? That is all you are asked to do. That is all they are charged with doing.

Did the facts indicate that they violated those two portions of the disorderly conduct section?

There is also another ordinance in the City of Chicago, written many years ago, again, not August 1st, August 2nd, or sometime after the act occurred. That is, that if you are going to parade, you have to have a parade permit.

What is the purpose of that? We are not saying that you cannot parade. We are saying that, tell us where

you are parading, we can afford police protection. Tell us where you are parading, we can block off the street. You have seen the American Legion, V.F.W., the Shriners, you have seen them parade with permits, but you see the streets blocked off. The City doesn't have mental telepathy in order to say, "Gee, I think there is going to be a parade in the Bridgeport Area. Maybe we ought to get some police protection out there, and block off the streets.

The testimony was that no permit was taken.

Commander Pierson stated that the first time he really knew they were coming was when they [785] were coming down 35th Street. The Task Force men had augmented his regular Ninth District personnel. He tried, maybe an hour beforehand to place police officers at the various locations. This Commander was charged with the responsibility, and he was trying to carry out that responsibility to the best of his ability. He stationed men at the corners of 36th and Union, 35th and Union, 36th and Lowe, and 35th and Lowe, because he felt that this is where the march was going to take place when they came.

When they came, there was a few people, twenty-five or thirty. Some of them had signs, "We love our Mayor," and some marchers had signs, "Daley, fire Willis." No one was arrested for the signs they were carrying, because you are allowed to convey ideas by way of signs. Nobody was arrested for that. There were some other signs carried by the neighbors, but not on the same cards or on the same printing as the "We love our Mayor," signs.

Some signs were pretty vile signs we will say. No one was arrested for that. That's too, is not a violation.

Ladies and gentlemen, this crowd kept [786] building up. The Commander ordered other policemen to protect these marchers. Thirty or thirty-five police officers were marching alongside, along the curb with these marchers to protect them. Eggs were being thrown, rocks were being thrown, people were breaking through police lines, trying to get to the street or to the marchers.

You heard Officer Patterson testify that people even tried to go through him, and he was at the curb. What happened? The Commander, at this time, talked to Dick Gregory, one of the Defendants who happened to be in front of the march. I won't say he was the leader of the march because I can't see a responsible leader subjecting his people to this, but he talked to Mr. Gregory.

He said, "Mr. Gregory, please, can you continue marching east when you get to 35th and Lowe? This is getting out of hand."

Did he continue marching east when he got to 35th and Lowe? Now, he went around another time. The crowd kept building up. I think, according to Mr. Gregory's testimony, he said he went around two more times, but according to other police he went around one more time. It doesn't matter how many [787] more times. What does matter is the conditions in this area at that time. What we agree upon is that at approximately 9:25, maybe twenty minutes after this first request, Commander Pierson again stopped this line of march, and with a bullhorn, which you can hear pretty far away, he said to this line of march, "I am requesting you to leave this area. Your presence here, at this time, is creating a dangerous situation. Your presence is creating near riotous conditions."

Here are people coming into an area without advance warning, no advance warning, and they expect the police

to protect them and everyone around them when there are at least two thousand people around them. One man said a million, but that was a little exaggeration. They were throwing eggs and they were throwing stones. Try to find someone in a crowd of two thousand people that threw a stone from the back of the line. What was Commander Pierson to do?

He didn't say, "You are under arrest, come on with me." He said, "Please leave the area. Your presence is creating a dangerous situation. I will afford police escorts out of here if you will take them. Three or four people did. They got into the [788] police car and drove out. Were these people hit by stones?

You heard the officers. They were ducking rocks and stones. This was a dangerous situation. You have to get a picture of the situation at that time. That is why the City put on these witnesses, so that you could know, because you were not there.

The Court: Ten minutes.

Mr. Elrod: Thank you.

Ladies and gentlemen, the Defendant, an entertainer, author, lecturer, then told the people that they weren't violating the law, that they should stay there and should be arrested and do not go limp. They didn't go limp. They walked into the vans. They were arrested.

Ladies and gentlemen, I ask you to consider this case from the evidence that you heard, fairly and impartially, without any regard to the color of the skin or what they were saying or why they were saying it, but I ask you to look at the laws of the City of Chicago. There is a need for these laws. The City Council passed these laws.

Ask yourself, did their actions at 9:25, did their actions in refusing to listen to a police [789] officer when

he asked them to leave an area, was that action a diversion tending to a breach of the peace, was that action a continued collection in a crowd or body for an unlawful purpose or for a purpose to the annoyance and disturbance of other persons? What were they to do, stop their sprinkler systems at eight o'clock, when they were turned on, as the witnesses stated they were, get off their porches as the witnesses stated they were when they came in?

This was a residential area, as Mr. Chambers said. They have their rights, too. They have a right to gather in a neighborhood, but when this situation was created and Commander Pierson made the request for them to leave, isn't that a breach of the peace to stay there? Isn't that a violation of that ordinance, an ordinance that has been on the books for many years?

Ladies and gentlemen, if you come in with a verdict of not guilty, would it not encourage other people not to listen to the police? The police are there for a purpose.

Ladies and gentlemen, "We shall overcome," yes, but ladies and gentlemen, not by breaking the [790] laws, not by breaking the laws of disorderly conduct, not by not listening to police personnel when they are asking and making reasonable requests.

I ask you, was this not a reasonable request? Sixty people were marching and are the police to wait for violence? Are the police to wait for these sixty people and the police that were there, to have blood spilled for them? The police Commander has to protect all the people, and ladies and gentlemen, when he requested, conjoled, and begged, practically, these Defendants to leave the area, and they refused to leave the area, isn't this an action that would tend to a breach of the peace?

When you deliberate, listen to the instructions of the Court. I urge you to think about what these ordinances are, and didn't these Defendants violate these ordinances?

I am sure you will come in with a finding, finding these Defendants guilty.

The Court: Mr. Bailiff, will you please secure the doors while I am reading these instructions.

[791] Faithful performance by you of your duties is vital to the administration of justice.

The law applicable to this case is contained in these instructions and it is your duty to follow them. You must consider these instructions as a whole, not picking out one instruction and disregarding others.

It is your duty to determine the facts, and to determine them from the evidence produced in open court. You are to apply the law to the facts and in this way decide the case. Neither sympathy nor prejudice should influence you.

The evidence which you are to consider consists of testimony of the witnesses and the exhibits offered and received. The production of evidence in Court is governed by rules of law. From time to time it has been my duty as judge to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. And you are not to consider exhibits not admitted into evidence or testimony which you were ordered to disregard.

In determining whether any proposition has been proved, you should consider all of the evidence [792] bearing on the question, without regard to which party produced it.

A fact may be proved by circumstantial evidence. Circumstantial evidence consists of proof of facts or cir-

cumstances which give rise to a reasonable inference of the truth of the fact sought to be proved.

In considering the evidence in this case, you are not required to set aside your own observation and experience in the affairs of life, but you have a right to consider all the evidence in the light of your own observation and experience in the affairs of life.

Before you were accepted and sworn to act as Jurors in this case you were questioned concerning your competency and qualifications to act as Jurors. The parties to this case accepted your answers to those questions. Those answers, which you then made to said questions concerning your competency, qualifications, fairness and freedom from prejudice and sympathy, were binding upon you then and remain binding on you until you are finally discharged from further consideration of this case.

[793] You are instructed that it is your duty as Jurors to consider this case without bias or prejudice against the Defendants by reason of race or color. The law is the same for these Defendants as it is for any other persons, there being no distinction under the law by reason of color or race.

The words uttered by these Defendants or any of them, in song, chant, or otherwise or the thoughts, ideas, or inferences sought to be conveyed thereby are of no probative value in this case and are not to be considered by you for any purpose in arriving at your verdict.

You are not to permit any opinion that you may have either for or against the cause or the purpose sought to be advanced by these Defendants nor are you to permit any opinion you may have as to whether the acts of the Defendants advance or retard any cause to influence you in any respect in arriving at your verdict.

The fact that the Defendants are charged with the violation of ordinances is no evidence that they are guilty thereof. The Defendants have pleaded not guilty and deny that they have [794] committed the violations charged against them. The City has the burden of proving by a clear preponderance of the evidence every material fact necessary to constitute the violations.

The Court instructs the Jury that the Court is the sole judge of the law in the case, and it becomes the duty of the Jury to follow the law as it is given to it by the Court in his instructions. You have no right to disregard them, or disregard any portion thereof, but you are bound to take the whole of them as they are given to you by the Court and apply them to this case.

You are the sole judges of the credibility of witnesses and of the weight to be given to the testimony of each of them. In determining the credit to be given any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias or prejudice he may have, and the reasonableness of his testimony considered in the light of the evidence in the case.

In deciding whether any fact has been proved, it is proper to consider the number of witnesses testifying on one side or the other as [795] to that fact, but the number of witnesses alone is not conclusive if the testimony of the lesser number is more convincing.

The Jury is instructed that an attorney has a right to interview a witness for the purpose of learning what testimony the witness will give. The fact that the witness has talked to an attorney and told him what he would testify to does not, by itself, reflect adversely on the truth of the testimony of the witness.

The Jury is instructed that on August 2, 1965, there was in full force and effect an ordinance known as disorderly conduct, Chapter 193, Section I of the Municipal Code of Chicago, as amended, which states, in part, as follows:

"All persons who shall make, aid, countenance, or assist in making any improper noise, riot, disturbance, breach of the peace, or diversion tending to a breach of the peace, within the limits of the City; all persons who shall collect in bodies or crowds for unlawful purposes, or for any purpose, to the annoyance or disturbance of other persons . . . shall be deemed guilty of disorderly conduct."

[796] The City claims in its complaint as to each defendant that said defendant on August 2nd, 1965, at 35th Street between Union and Lowe Avenues, committed the offense of disorderly conduct in that he, did collect in a crowd or body for unlawful purposes or for purposes to the annoyance or disturbance of other persons; which claims each of the defendants deny.

The City claims in its complaint as to each Defendant that said Defendant on August 2, 1965, at 35th Street between Union and Lowe Avenues, committed the offense of disorderly conduct in that he did make or aid in making an improper noise, riot, disturbance, breach of the peace, or diversion tending to a breach of the peace, within the limits of the City of Chicago, which claims each of the Defendants deny.

The Jury is instructed that on August 2nd, 1965, there was in full force and effect a Municipal Ordinance of the City of Chicago, Section 36-31 which states as follows: "No parade shall be allowed on any public way, nor shall any open air public meeting be held in or

upon [797] any public way, until a permit in writing therefor shall be first obtained from the Department of Streets and Sanitation. . . ."

If any evidence has been presented, or any argument made by either attorney which does not go to the credibility of a witness, or contribute a scintilla toward an inference proving or disproving that a Defendant did make, or aid in making an improper noise, riot, disturbance, breach of the peace, or diversion tending to a breach of the peace within the limits of the City of Chicago on August 2nd, 1965, as charged in the City's complaint, or that a Defendant collected in a crowd or body for unlawful purposes, or for a purpose to the annoyance or disturbance of other persons within the limits of the City of Chicago on August 2nd, 1965, as charged in the City's complaint, you are instructed that such evidence or argument is of no probative value and shall not be considered by you in any respect.

The Court instructs the Jury that when arresting officers testify in a case they at once become the same as any other witnesses, and [798] their credibility is to be tested by and subject to the same tests as are legally applied to any other witnesses, and in determining the degree of credibility that should be accorded to their testimony, the Jury have the right to take into consideration the fact that they are interested in the result of the case as well as their conduct and demeanor upon the witness stand; and the Jury are to take into consideration the fact, if such is the fact, that they have been contradicted by other witnesses.

The Jury is instructed that the fact that persons other than these Defendants may or may not have violated any laws or may or may not have been arrested

should not be considered by you in determining the guilt or innocence of these Defendants.

The Court instructs the Jury that a Defendant cannot be found guilty upon mere suspicion, conjecture, or speculation on the part of the Jury.

You are instructed that it is not necessary that the City prove the guilt of any Defendant beyond all reasonable doubt. However, [799] it is the burden of the City of Chicago to prove the guilt of each defendant by a clear proponderance of the evidence.

A fact is proved by a clear preponderance of the evidence when you are clearly satisfied, firmly convinced, and persuaded without reservation, that such fact is more probably true than not true.

It is the right of an attorney to protect the interests of his client by objecting to the introduction of, or moving to strike out, evidence he deems improper, as well as to offer evidence he believes competent for admission. You must not be prejudiced against any party to this case because the attorney for such party may have made such objections or motions or offers, regardless of the Court's ruling thereon.

Neither by these instructions, or by any ruling, remark made, attitude, posture, gesture, or any other vocal or physical expression does the Court intimate or mean to give, or wish to be understood as giving any opinion as to the guilt or innocence of any defendant, or as to what is a fact or what is not a fact. That is for you to decide from the evidence under these instructions.

[800] Ladies and gentlemen of the Jury, you will take with you to the jury room twenty forms of verdicts, one of which reads as follows:

"We the Jury, find the Defendant," and the name of the individual Defendant will then be written on the

line, "not guilty of violating Chapter 193, Section I, Disorderly Conduct, (collect in a crowd or body for an unlawful purpose or for a purpose to the annoyance and disturbance of other persons) of the Municipal Code, as amended, of Chicago."

The second set of forms you will have reads:

"We, the Jury, find the Defendant," after which word "Defendant," the name will be affixed, "guilty of violating Chapter 193, Section I, Disorderly Conduct (collect in a crowd or body for an unlawful purpose or for a purpose to the annoyance and disturbance of other persons) of the Municipal Code of the City of Chicago, as amended."

The other two sets of verdicts you will take with you read as follows:

"We, the Jury, find the Defendant," after [801] which word "Defendant," the name will appear, "not guilty of violating Chapter 193, Section I, Disorderly Conduct (make or aid in making an improper noise, riot, disturbance, breach of the peace, or a diversion tending to a breach of the peace) of the Municipal Code of the City of Chicago, as amended."

The fourth form reads: "We, the Jury, find the Defendant, Charles Gantz, guilty of violating Chapter 193, Section I, Disorderly Conduct (make or aid in making a noise, riot, disturbance, breach of the peace or diversion tending to a breach of the peace) as amended."

It will be necessary that ten of these twenty verdicts be signed.

Mr. Bailiff, raise your right hand and be sworn.

(Whereupon, the bailiff was duly sworn by the Court.)

You may take twelve jurors to the jury room and give them the instructions and verdict forms.

Mrs. Williams: May I suggest—

The Court: It will be necessary for you to [802] select one of you as the foreman.

Will the two alternate Jurors approach the bench, please.

I don't know whether you have had to serve as alternate Jurors or on a Jury before, but this case involved a tremendous amount of law, and it took a long period of time. If anything happened to the other Jurors during this time, we would have had to start all over again. For that reason, you two were selected as alternate Jurors; therefore you are discharged from Jury duty. You are discharged now.

(Whereupon, the Jury retired to the jury room for deliberation of the verdict.)

The Court: Ladies and gentlemen of the Jury, have you reached a verdict?

The Foreman: Yes, Your Honor, we have.

The Court: Will you hand your verdicts to the bailiff. Mr. Bailiff?

We, the Jury, find the Defendant, Howard Barber, guilty of violating Chapter 193, Section I, Disorderly Conduct, (collect in a body or crowd for [803] an unlawful purpose, or for a purpose to the annoyance and disturbance of other persons) of the Municipal Code of the City of Chicago, as amended. Signed foreman and the eleven other Jurors.

We, the Jury, find the Defendant, William Dixon, guilty of violating Chapter 193, Section I, Disorderly Conduct, (collect in a body or crowd for an unlawful purpose, or for a purpose to the annoyance and disturbance of other persons) of the Municipal Code of the City of Chicago, as amended. Signed foreman and the eleven other Jurors.

We, the Jury, find the Defendant, Charles Gant, guilty of violating Chapter 193, Section I, Disorderly Conduct, (collect in a body or crowd for an unlawful purpose, or for a purpose to the annoyance and disturbance of of other persons) of the Municipal Code of the City of Chicago, as amended. Signed Foreman and the eleven other Jurors.

We, the Jury, find the Defendant, Dick Gregory, guilty of violating Chapter 193, Section I, Disorderly Conduct, (collect in a body or crowd [804] for an unlawful purpose, or for a purpose to the annoyance and disturbance of other persons) of the Municipal Code of the City of Chicago, as amended. Signed Foreman and the eleven other Jurors.

We, the Jury, find the Defendant, Gean Gregory, guilty of violating Chapter 193, Section I, Disorderly Conduct, (collect in a body or crowd for an unlawful purpose and disturbance of other persons) of the Municipal Code of the City of Chicago, as amended. Signed Foreman and the eleven other Jurors.

We, the Jury, find the Defendant, Howard Barber, guilty of Chapter 193, Section I, Disorderly Conduct (make or aid in making an improper noise, riot, disturbance, breach of the peace or a diversion tending to a breach of the peace) of the Municipal Code of Chicago, as amended, and signed by the Foreman and the eleven other Jurors.

We, the Jury, find the Defendant, William Dixon, guilty of Chapter 193, Section I, Disorderly Conduct (make or aid in making an improper noise, riot, disturbance, breach of the peace or a diversion tending to a breach of [805] the peace) of the Municipal Code of Chicago, as amended, and signed by the Foreman and the eleven other Jurors.

We, the Jury, find the Defendant, Charles Gant, guilty of Chapter 193, Section I, Disorderly Conduct (make or aid in making an improper noise, riot, disturbance, breach of the peace or a diversion tending to a breach of the peace) of the Municipal Code of Chicago, as amended, and signed by the Foreman and the eleven other Jurors.

We, the Jury, find the Defendant, Dick Gregory, guilty of violating Chapter 193, Section I, Disorderly Conduct (make or aid in making an improper noise, riot, disturbance, breach of the peace or a diversion tending to a breach of the peace) of the Municipal Code of Chicago, as amended, and signed by the Foreman and the eleven other Jurors.

We, the Jury, find the Defendant, Gean Gregory, guilty of violating Chapter 193, Section I, Disorderly Conduct (make or aid in making an improper noise, riot, disturbance, breach of the peace or a diversion tending to a breach of [806] the peace) of the Municipal Code of Chicago, as amended, and signed by the Foreman and the eleven other Jurors.

Is it the wish of the attorneys that the Jury be polled?

Mrs. Williams: Yes, it is.

The Court: I am going to ask each of the Jurors, individually, "Was this and is this your verdict," with reference to all of the verdicts signed as to all of the Defendants. If it was and it is your verdict, you will answer by saying, "It was and it is."

If your verdict was or is to the contrary, you will indicate with the appropriate expression.

(Jury polled)

* * *

[810] (Certificate of court reporter and approval by trial court)

(Certificate of clerk)

[3] (Caption)

City Of Chicago
A Municipal Corporation,
Plaintiff

v.

Derrick Ambrose
Defendant

COMPLAINT

No.

A. Hite, complainant, now appears before the Circuit Court of Cook County and states that Derrick Ambrose has, on or about 2nd Aug 65 at 35th St. Lowe &

Committed the offense of Disorderly Conduct in that he

• • •

☒ Did collect in a crowd or body for unlawful purposes or for purposes to the annoyance or disturbance of other persons.

• • •

In violation of Chapter 193 Section I of The Municipal Code of The City of Chicago.

(Complainant's signature and address)

(Verification and stamp of filing)

[5] (Caption)

STIPULATION

The City of Chicago, a municipal corporation, by its attorney, Raymond F. Simon, Corporation Counsel, and the defendants, by their attorneys, Jean Williams and Ronald Silverman, hereby stipulate that the common law record, including any post trial motions applicable thereto, and the verbatim report of proceedings in *City of Chicago* v. *Gregory, et al.*, 65 MC 1 - 585788,89, be incorporated by reference as the common law record, including post trial motions applicable thereto, and verbatim report of proceedings in the above cause; and that the judgment of the court in the above cause be duly entered upon examination of those records.

(Signatures of Attorneys)

[6] (Verdict)

"The Court Finds The Defendant Guilty Of A Violation Of The Ordinance Described In The Complaint Herein And Assesses A Fine Against Said Defendant In The Sum Of Twenty Five ($25.00) Dollars".

This cause coming on for further proceedings herein, it is considered by the Court that the plaintiff have judgment on the finding of the Court entered herein, it appearing to the Court that said defendant has duly and regularly waived a jury trial in this cause and it is considered by the Court that the plaintiff have and recover of and from the defendant a fine in the sum of Twenty Five Dollars ($25.00) and that execution issue for the amount of said fine. And it appearing to the Court that said fine accrued to the plaintiff in consequence of the violation by defendant of the ordinance of the plaintiff described in the complaint herein, the Court finds that it has jurisdiction of the subject matter of this cause and

of the parties hereto, and that said defendant has been duly and regularly convicted of a violation of said [7] ordinance according to law, and that any person convicted of a violation of said ordinance, may, under the law, be imprisoned in the House of Correction of said City for non-payment of any fine imposed for such violation.

Now comes the defendant herein and moves the Court to vacate above judgment, which motion the Court ordered entered and set for hearing April 1st, 1966.

Appeal Bond set at Two Hundred Twenty Five Dollars ($225.00).

[10] (Caption)

NOTICE OF APPEAL

1. Defendants-appellants hereby appeal from the judgment entered against them as co-defendants in the above cause on February 23, 1966, whereby it was adjudged pursuant to stipulation that the defendants were found guilty and fined $50.00 for violating two paragraphs of section 193-1 of the Municipal Code of Chicago, in that they did (1) "make, aid, countenance, or assist in making any improper noise, riot, disturbance, breach of the peace, or diversion tending to a breach of the peace, within the limits of the city."; and in that they did (2) "collect in bodies or crowds for unlawful purposes, or for any purpose, to the annoyance or disturbance of other persons."

2. Defendants-appellants pray that the judgment pursuant to stipulation of February 23, 1966, in the above cause be reversed in its entirety, or in the alternative that said judgment be vacated in its entirety and a new trial ordered.

(Signature of Attorney)

Dated: March 10, 1966

[16] Praecipe for Trial Court Record

[23] (Caption)

ORDER

It is hereby ordered:

1. That appeal bond be reset in the above cause in the sum of $25.00 for each charge upon which above named defendants were convicted, for a total of $50.00 to be posted by each of the above named defendants;

2. That the original appearance bonds deposited by or on behalf of the defendants in the above cause be allowed to stand as a portion of the total appeal bonds to be posted in the above cause;

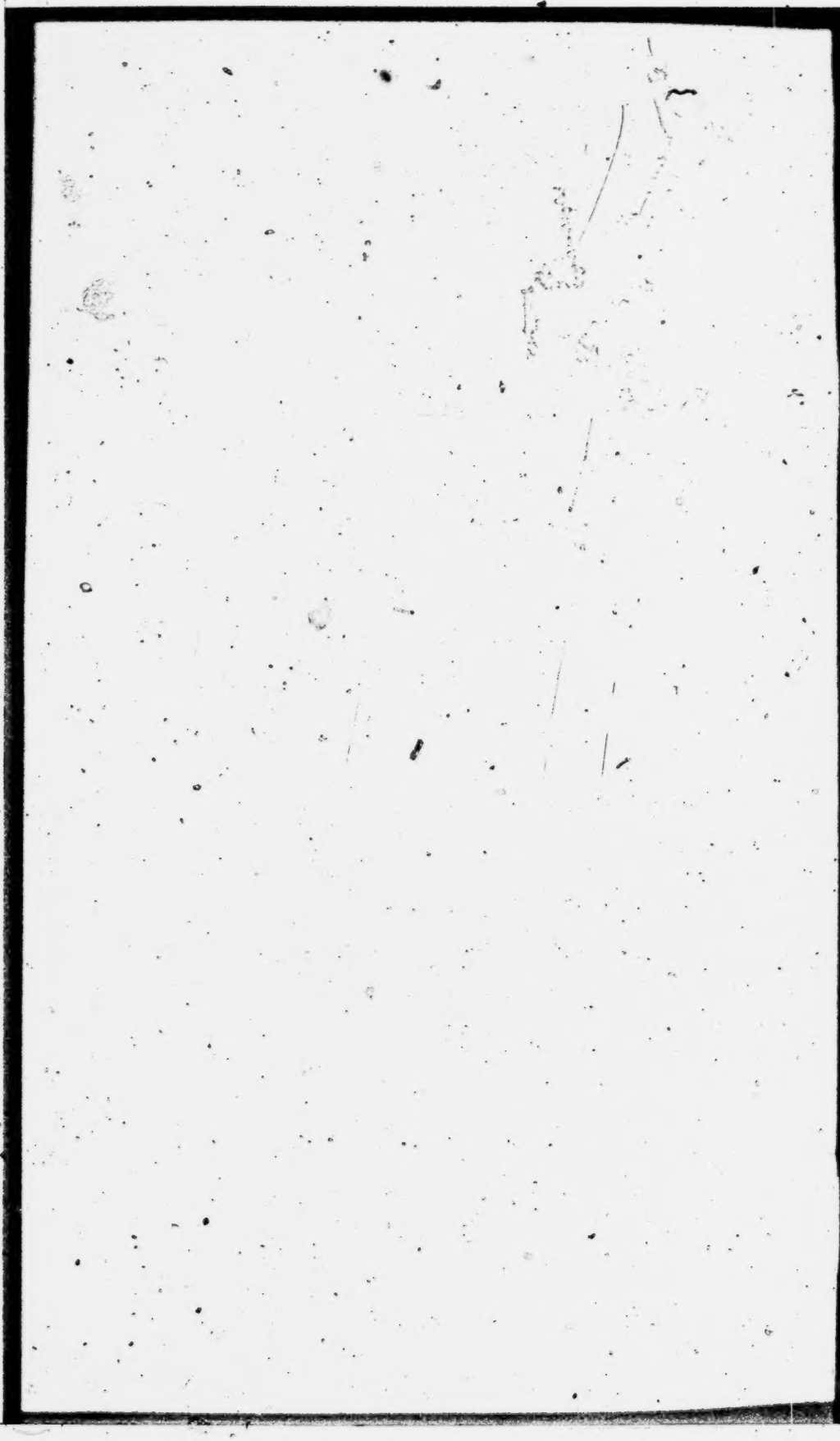
3. That supersedeas take effect, nunc pro tunc, as of April 1, 1966, upon the full deposit of appeal bond money for the above named defendants.

Dated at Chicago, Illinois, this 29th day of April, 1966.

Enter:

/s/ Daniel J. White
Magistrate
Circuit Court of Cook County, Illinois
Municipal Department, District 1

(Certificate of Clerk)



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 60

CITY OF CHICAGO, a Municipal Corporation,

Respondent,

v.

DICK GREGORY, et al.,

Petitioners.

PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT.

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INDEX

	PAGE
Opinion Below	1
The Record	2
Jurisdiction	2
Questions Presented	2
Municipal Ordinances And Constitutional Provisions Involved	3
Statement	4
Reasons For Granting The Writ	8
Important Constitutional Questions Involved And Conflict With Decisions Of This Court	8
The Heckler's Veto Conflicts With The First Amendment	8
The Chicago Disorderly Conduct Ordinance Is Unconstitutionally Vague And Overbroad	9
Denial Of A Fair Trial	11
Conclusion	12
Appendix—(Opinion of the Supreme Court of Illinois)	1a-16a

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Feiner v. New York, 340 U.S. 315 (1951) 8
Landry v. Daley, United States District Court, Northern District of Illinois, Eastern Division, No. 67 C 1863, March 4, 1968 10
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No.

CITY OF CHICAGO, a Municipal Corporation,

Respondent,

v.

DICK GREGORY, et al.,

Petitioners.

PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT.

Petitioners pray that a writ of certiorari issue to review the judgment of the Illinois Supreme Court entered in the above case on January 19, 1968. No petition for rehearing was filed.

OPINION BELOW.

The judgment of the Illinois Supreme Court is reported at 39 Ill.2d 47, 233 N.E.2d 422, (1968) and is set out in full as an appendix to this petition.

THE RECORD.

A certified copy of the record below has been filed in this Court.

JURISDICTION.

This petition is presented for review of the judgment of the Illinois Supreme Court entered on January 19, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257.

QUESTIONS PRESENTED.

Whether peaceful demonstrators:

1. Are guilty of disorderly conduct as a result of invective and threat of violence of their hecklers?

2. May be convicted under a disorderly conduct ordinance that leaves discretion in the police of which First Amendment conduct is proscribed?

3. Are denied a fair trial where in a jury trial on disorderly conduct the prosecution gets an instruction on a parade permit where no permit was required?

MUNICIPAL ORDINANCES AND CONSTITUTIONAL PROVISIONS INVOLVED.

Municipal Code of Chicago, Section 193-1

All persons who shall make, aid, countenance, or assist in making any improper noise, riot, disturbance, breach of the peace, or diversion tending to a breach of the peace, within the limits of the city; all persons who shall collect in bodies or crowds for unlawful purposes, or for any purpose, to the annoyance or disturbance of other persons; . . . shall be deemed guilty of disorderly conduct, and upon conviction thereof, shall be severally fined not less than one dollar nor more than two hundred dollars for each offense.

United States Constitution, Fourteenth Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Constitution, First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATEMENT.

On August 2, 1965, defendants and others protesting public school conditions in Chicago, met at Buckingham Fountain, marched to City Hall and conducted a brief demonstration, and continuing under police scrutiny, continued to the home of the Mayor on the 3500 block on South Lowe Street (R. 105-106). The marchers went four times around the block (R. 623). They were peaceful and well disciplined (R. 146, 161, 184, 558, 616-617). They carried placards protesting conditions in the schools and calling for the removal of the general superintendent of schools (R. 106, 538, 539, 644-645). They did not shout or throw things, and pursuant to a police suggestion, they ceased all singing after 8:20 p.m. (R. 137, 153-154, 161-162, 184, 548, 558, 613-615). Except when prevented from doing so by hostile onlookers, or by sprinkler hoses that had been set and turned on in their path, (R. 150, 618, 623), the marchers kept to the public sidewalks along their way in double file (R. 148, 159, 618). They varied their route on the fourth trip around the block to avoid 100 to 150 spectators who had begun their own march (R. 632, 633-634). They waited for signals either from the police or from an assistant corporation counsel before proceeding (R. 632, 635, 636). Police Commander Pierson, in charge of the police officers present, stopped the marchers on 35th Street, near Lowe (R. 162-163), at a time when the crowd of spectators had grown to about 1,000 to 1,200 persons (R. 162-163), and after a number of spectators had shouted, yelled, made threats, obscene gestures and remarks, and used invective and demeaning terms at the marchers (R. 108, 116, 130, 133, 137, 160,

184-185, 549, 554, 621), and after a number of spectators had hurled rocks, eggs, or bottles at the marchers (R. 112, 114-115, 120-121, 154, 160, 184-185, 554). It is disputed whether Commander Pierson told the marchers, through defendant Gregory who acted as their spokesman, that they would be permitted two more trips around the block and then be requested to leave (R. 638, 639-640, 660), or whether the Commander directly requested the marchers to leave, because he thought the situation was becoming increasingly dangerous (R. 114, 118, 551). The Commander testified that when none of the marchers elected to leave, he used a loud-speaker and asked them to leave because "their presence here might incite a riot, because the crowd was unruly." (R. 552, 568). He told them that if they persisted in marching they would be arrested (R. 553, 569). He offered police escorts through the hostile crowd to those marchers who were willing to leave, and three or four did accept (R. 119, 189, 310, 553). The Commander repeated his request to the rest of the marchers about five times and then ordered their arrest (R. 119-120, 209, 567). Pursuant to instructions from defendant Gregory, each marcher was peaceful and cooperative, and walked into police vans when arrested (R. 553, 643-644).

Defendants were charged with violation of separate provisions of Section 193-1 of the Municipal Code of Chicago, that they (R. 3) "Did make or aid in making an improper noise, riot, disturbance, breach of peace, or diversion tending to a breach of the peace, within the limits of the city," and that they (R. 3) "Did collect in a crowd or body for unlawful purposes or for purposes to the annoyance or disturbance of other persons."

Defendants' pre-trial motions to dismiss the complaints (R. 69) were denied and defendant Gregory and four others were tried by jury. On a stipulation of facts, the charges against the other 35 defendants were later determined on the same record.

At the trial the court over objection permitted the city to introduce testimony of statements attributed to defendant Gregory at Buckingham Fountain. The statements, made some four hours prior to the incident at issue, occurred in the presence of the police who made no arrests at that time and who permitted the defendants to march through the downtown area and then south to 35th Street (R. 104-106) in their presence. Also over objection the city was permitted to show that none of the defendants had parade permits (R. 97, 100), and over objection the court gave an instruction to the jury in the language of the "parade permit" ordinance (Section 36-31 of the Municipal Code of Chicago), although no violation of that ordinance was charged against the defendants (R. 751, 796-797). Defendants were repeatedly not permitted to cross examine as to whether arrests of the spectators were made (R. 139, 144, 510). In those instances where such cross examination was allowed, the city's witnesses testified that no spectators were arrested (R. 530). Neither were defendants permitted to show a "lawful" purpose for their conduct (R. 645-646). The court over objection read the two provisions of Section 193-1 to the jury as an instruction (R. 719, 795), although defendants' instruction in the terms of constitutional provisions on free speech, assembly, and petition was refused (R. 668).

Defendants' motion for a directed verdict of acquittal was denied and written post trial motions were denied (R. 597, 25), and judgment was entered on the verdict and defendant Gregory and four others were fined $200.00, on each charge, and on a stipulation of facts, the other 35 defendants were fined $25.00 on each charge.

On review, the Illinois Supreme Court held (Appendix, p. 15a) that defendants were not denied their right to free speech, free assembly, and freedom to petition for redress of grievances. The Court held (Appendix, p. 13a) that all reasonable efforts were made to protect the demonstrators, even though the record shows (R. 475, 476, 478, 530) that none of the threatening spectators was arrested and no attempt was made to disperse the crowd. The Court ruled (Appendix, p. 16a) that the Chicago disorderly conduct ordinance was not unconstitutionally vague or overbroad as applied to free expression and free assembly. Finally, the Court decided (Appendix, p. 16a) that it was not prejudicial error to instruct the jury on the Chicago parade permit ordinance, even though defendants were not charged under that ordinance and no permit would have been required. Petitioners seek review of this decision.

REASONS FOR GRANTING THE WRIT.

IMPORTANT CONSTITUTIONAL QUESTIONS INVOLVED, AND CONFLICT WITH DECISIONS OF THIS COURT.

The Heckler's Veto Conflicts With The First Amendment.

This case presents the question: Can hecklers by threat of violence veto peaceful First Amendment conduct? This Court has spoken on this question, but this is the first time it has been presented in a factual record squarely on this point.

In *Brown* v. *Louisiana,* 383 U.S. 131 (1966), this Court (at 133) stated flatly that "participants in an orderly demonstration in a public place are not chargeable with the danger, unprovoked except by the fact of the constitutionally protected demonstration itself, that their critics might react with disorder or violence." See also, *Cox* v. *Louisiana,* 379 U.S. 536, at 551 (1965), and *Wright* v. *Georgia,* 373 U.S. 284, at 293 (1963). However, the Illinois Supreme Court held (Appendix, p. 15a) that the police had discretion to proceed against the peaceful demonstrators rather than against the hostile crowd. It did so, in the absence of threats by the demonstrators, (d. *Feiner* v. *New York,* 340 U.S. 315 (1951)), and without any arrest of the threatening spectators or any effort by the police to disperse the crowd, and in the face of the above holdings of this Court.

Professor Harry Kalven, analyzing and commenting on demonstration cases and protected conduct, has coined the term the "heckler's veto." Kalven, *The Negro and the First Amendment,* (1965) pp. 140-160. The holding of

the Illinois Supreme Court in this case is a clear recognition of the power in the heckler to veto, by threats of violence, conduct that is both peaceful and protected under the First Amendment. This holding is an invitation to quash unpopular views, whether by public officials(*) or private citizens, on integration, public schools, housing, the Viet Nam war, and other public interest issues, and to do so with impunity. Yet, it is

> "[o]nly by the firmest display of the government's intention to use all the power at its disposal to protect the constitutional rights of dissenters will hecklers be discouraged from taking the law into their own hands." Haiman, *The Rhetoric of the Streets: Some Legal and Ethical Considerations,* Vol. LIII, No. 2, The Quarterly Journal of Speech (April, 1967), p. 108.

The Chicago Disorderly Conduct Ordinance Is Unconstitutionally Vague And Overbroad.

The Chicago ordinance also squarely presents the problems of vagueness and overbreadth. Under the Illinois Supreme Court opinion discretion is left to the decision of the police to be made on the spot—without warning of what conduct may be proscribed in the ordinanee itself, and without standards to be applied by the police, court or jury. This Court previously reversed a conviction under the ordinance here involved because of vagueness and overbreadth, *Terminiello* v. *Chicago,* 337 U.S.

(*) e.g. Secretary of Agriculture Freeman silenced by hecklers while speaking at University of Wisconsin, March 21, 1968, as reported in the New York Times, March 22, 1968, p. 37.

1, at 6 (1949). This Court has also held similar disorderly conduct ordinances void for vagueness and overbreadth. *Cox* v. *Louisiana,* 379 U.S. 536, at 552 (1965); *Edwards* v. *South Carolina,* 372 U.S. 229, at 238 (1963); *Wright* v. *Georgia,* 373 U.S. 284, at 293 (1963); see *Brown* v. *Louisiana,* 383 U.S. 131 at 144, Brennan, J., concurring. See also, *Landry* v. *Daley,* United States District Court, Northern District of Illinois, Eastern Division, No. 67 C 1863, March 4, 1968, decided after the Illinois Supreme Court opinion, holding the Chicago ordinance invalid, because vague in its entirety.

Following the *Landry* decision, however, the language of the Illinois Supreme Court in the opinion in the present case was codified by the City of Chicago into a new disorderly conduct ordinance.(*) Thus, the holding of the Illinois Court has become judicial precedent for legislation, and both the opinion and the ordinance honor and further vagueness, overbreadth, and the heckler's veto. Yet the heckler's veto squelches debate and prevents voicing of unpopular views. This Court should grant

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(*) "A person commits disorderly conduct when he knowingly: * * *

> Refuses or fails to cease and desist any peaceful conduct or activity likely to produce a breach of peace where there is an imminent threat of violence, and where the police have made all reasonable efforts to protect the otherwise peaceful conduct and activity, and have requested that said conduct and activity be stopped and explained the request if there be time;

Section 193-1 of the Municipal Code of the City of Chicago, as amended, Journal of the Proceedings of the City Council of the City of Chicago, Illinois, Tuesday, March 26, 1968, pp. 2561-62."

certiorari in order to preserve important First Amendment rights which "are delicate and vulnerable as well as supremely precious in our society." *NAACP* v. *Button*, 371 U.S. 415, at 432 (1963).

Denial Of A Fair Trial.

Alternatively, defendants were denied a fair trial because the jury received, over defendants' objection, a instruction on the Chicago parade permit ordinance even though no violation of that ordinance was charged and no permit would have been required. See *Cox* v. *Louisiana*, 379 U.S. 536, at 556, fn. 15 (1964):

> "Although cited by neither party, research has disclosed the existence of a local ordinance of Baton Rouge, Baton Rouge City Code, Tit. 11, §210 (1957), which prohibits 'parade[s] . . . along any street except in accordance with a permit issued by the chief of police. . . .' A similar ordinance was in existence in *Fields* v. *South Carolina, supra*. As in *Fields*, this ordinance is irrelevant to the conviction in this case as not only was appellant not charged with its violation but the existence of the ordinance was never referred to by the State in any of the courts involved in the case, including this one, and neither the Louisiana trial court nor the Supreme Court relied on the ordinance in sustaining appellant's convictions under the three statutes here involved. Moreover, since the ordinance apparently sets forth no standards for the determination of the Chief of Police as to which parades to permit or which to prohibit, obvious constitutional problems would arise if appellant had been convicted for parading in violation of it. See the discussion in text above; *Lovell* v. *Griffin, supra*, at 452-453; *Hague* v. *CIO, supra*, at 518; *Saia* v. *New York, supra*, at 559-560."

CONCLUSION.

The streets and sidewalks are the one forum in our society that is accessible to all persons, regardless of wealth, politics, education, or other qualifications. It is essential that this forum remain open.

> "We should in these times be mindful that to the extent we secure legitimate and orderly access to means of communication for all views, we create conditions in which there is no incentive to resort to more disruptive conduct." *Wolin* v. *Port of New York Authority*, ... F. 2d ..... (2d Cir., March 1, 1968), 36 U.S. Law Week 2550, 2551.

For the reasons set out above, Petitioners ask this Court to grant review and to reverse the Court below.

Respectfully submitted,

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APPENDIX

Opinion of the Supreme Court of Illinois

Docket Nos. 39983-39984—Agenda 28—November, 1967.

The City of Chicago, Appellee

v.

Dick Gregory et al., Appellants.

Mr. Justice House delivered the opinion of the court:

These consolidated appeals involve the conviction of 40 civil rights marchers under two provisions of the disorderly conduct ordinance of the city of Chicago. (Municipal Code of Chicago, sec. 193—1.) In cause number 39983 defendant Dick Gregory and four other defendants were found guilty in a jury trial before a magistrate in the circuit court of Cook County and each defendant was fined $200. In cause number 39984 the other 35 defendants were found guilty in a trial before a magistrate on a stipulation of facts adduced at the Gregory trial and each defendant was fined $25. The defendant Gregory was charged with disorderly conduct in that he "did make or aid in making an improper noise, disturbance, breach of peace, or diversion tending to a breach of the peace within the limits of the city." A constitutional question gives us jurisdiction.

The gist of the occurrence giving rise to the arrest and conviction of defendants was a march by 65 to 85 persons around the home of the mayor of Chicago. The marchers carried signs, sang songs and chanted slogans protesting the retention of Dr. Benjamin C. Willis as Superintendent

of Schools of Chicago and his handling of school segregation problems in the city. In order to avert what the police believed would become a riot, the marchers were ordered to stop their demonstration and upon their refusal they were arrested.

The city in its brief has taken the position that residential picketing is *per se* a violation of the city ordinance. Extremely strong arguments have been advanced for the proposition that the constitutional rights of free speech, free assembly and freedom to petition for redress of grievances do not protect marches, demonstrations and picketing of a residence or residences—even of the privately owned homes of public officials. (See Kamin, Residential Picketing and the First Amendment, 61 N.W. L. Rev. 177 (1966); *Cf.* Chafee, Free Speech in the United States (Cambridge, 1948), pp. 406-407; Pritchett, The Brief, p. 4 (published by the Illinois Division of American Civil Liberties Union, September 1965); but see Haiman. The Rhetoric of the Streets: Some Legal and Ethical Considerations, LIII The Law Quarterly Journal of Speech 99 (April 1966); Kalven, The Concept of the Public Forum, 1965 Supreme Court Review I.) Furthermore, our legislature has now enacted a statute prohibiting residential picketing (Ill. Rev. Stat. 1967, chap. 38, par. 21.1-1) based on the following declaration of policy: "The Legislature finds and declares that men in a free society have the right to quiet enjoyment of their homes; that the stability of community and family life cannot be maintained unless the right to privacy and a sense of security and peace in the home are respected and encouraged; that residential picketing, however just the cause inspiring it, disrupts home, family and communal life; that residential

picketing is inappropriate in our society where the jealously guarded rights of free speech and assembly have always been associated with respect for the rights of others. For these reasons the Legislature finds this Article to be necessary." Professor Kamin in his article, Residential Picketing and the First Amendment, states that nine other States (Colorado, Connecticut, Florida, Hawaii, Kansas, Michigan, Nebraska, Utah and Wisconsin) have enacted statutory prohibitions of residential picketing. 61 N.W. L. Rev. 177, 206.

A review of the record shows, however, that the arrests were not made on the basis of residential picketing nor did the trial proceed on that theory. Under these circumstances, we will assume, for the purpose of this opinion, as did the police and the magistrates below, that the residential picketing was not in and of itself a violation of the city ordinance.

Lieutenant Hougeson testified that on August 2, 1965, he was in charge of the "task force" of the Chicago police department and that his assignment for that day was to protect a group of people who were going to march. He explained that the task force is a unit which provides extra police protection to a district to help handle crowds at a sporting or public event or to combat a high crime rate in a certain district. On this day he had 40 police officers and 4 sergeants. About 4:00 P.M. he went to Buckingham Fountain in Grant Park on Chicago's lake front just east of the Loop, where approximately 65 marchers had assembled. He observed Dick Gregory addressing the marchers and heard him say, "First we will go over to

the snake pit [city hall]. When we leave there, we will go out to the snake's house [the mayor's home]. Then, we will continue to go out to Mayor Daley's home until he fires Ben Willis [Superintendent of Schools]."

About 4:30 P.M. the marchers, two abreast, walked out of the park and went to the city hall in the loop. The marchers then walked south on State Street to 35th Street and then proceeded west to Lowe Avenue, a distance of about 5 miles from the city hall. The mayor's home is at 3536 South Lowe Avenue. The demonstrators had increased in number to about 85 and they arrived at the mayor's home about 8:00 o'clock P.M. In addition to the police, the marchers were accompanied by their attorney and an assistant city counsel. At the suggestion of an assistant city counsel, Gregory had agreed that the group would quit singing at 8:30 P.M. Commander Pierson, district commander of the 9th police district which encompasses this area, met Lieutenant Hougeson at the corner of 35th and Lowe and assumed command of the police operations.

There were about 35 people on the corner and a group of about 6 or 8 youngsters carrying a sign "We Love Mayor Daley" tried to join the marchers but the police stopped them. As the demonstrators started south into the 3500 block of Lowe Avenue, Gregory testified he went back through the line to tell everyone just to keep singing and to keep marching. "Don't stop and don't answer any one back. Don't worry about anything that is going to be said to you. Just keep marching. If anyone hits you or anything, try to remember what he looks like, but above all means, do not hit them back. Keep the line

straight and keep it tight." The demonstrators chanted "Ben Willis must go, Snake Daley, also;" "Ben Willis must go—When?—Now;" "We are going to the home of the snake, the snake pit is down the street;" "Hey, Hey, what do you know, Ben Willis must go" and "Hey, Hey, what do you know, Mayor Daley must go also." They carried signs which read: "Daley fire Willis;" "Defacto, Desmacto, it is still segregation;" "Ben Willis must go—now;" and "Mayor Daley, fire Ben Willis." They also sang the civil rights songs, "We Shall Overcome" and "We Shall Not Be Moved."

The police ordered the taverns closed during the march. Police from the task force, the 9th district and other districts surrounded the block in which the mayor's home is located. There were about 10 officers at each of the four intersections and about 10 officers spread along each of the four blocks. The rest of the 100 police officers assigned to the march accompanied the demonstrators as they marched around the block. The police tried to keep all spectators across the street from the marchers. They were equipped with walkie-talkie radios to relay reports of conditions to each other and they had a bullhorn with which they addressed the spectators and the demonstrators.

As the marchers started around the block the first time, the neighbors began coming out of their homes. On the second time around the block some of the residents had moved their lawn sprinklers onto the sidewalk and the demonstrators went into the street just long enough to get around the water. On the third trip around the block the water sprinklers had been removed, presumably by order

of the police. Gregory himself testified to several instances when the police kept the crowd that was accumulating from interfering with the march. "One of the neighborhood people stood in front of the line, and we just stopped. This individual didn't move and we didn't move. After a few minutes, the officer standing on the corner asked him to move and he moved." He said that on their fourth trip around the block (about 8:30 P.M.) people were yelling out the windows and the police made spectators in door ways close the doors. About 8:30 P.M. the demonstrators quit their singing and chanting and marched quietly. Shortly before 9:00 P.M. 100 to 150 spectators formed a line of march ahead of the demonstrators. Gregory said "the lieutenant [Hougheson] asked me if I would hold up the line until they got those people out of the way. I said, I will hold up the line, but they have just as much right to march peacefully as we have." The spectators were ordered to move. In order to avoid the appearance that the marchers were following the 100 to 150 spectators who had been ordered to move, Gregory said his group marched straight south crossing 36th Street thus taking them one block south of the block which they had been marching. They had to stop when they crossed 36th Street while the police opened a pathway through about 300 spectators they had confined on the corner across the street.

Sergeant Golden testified that between 8:00 o'clock and 9:00 o'clock the crowd increased steadily to a few hundred, but that from 9:00 o'clock until about 9:20 o'clock the people just seemed to come from everywhere until it reached between 1,000 and 1,200. During this time the crowd became unruly. There was shouting and threats.

(Opinion of the Supreme Court of Illinois)

"God damned nigger, get the hell out of here;" "Get out of here niggers—go back where you belong or we will get you out of here" and "Get the hell out of here or we will break your blankety-blank head open." Cars were stopped in the streets with their horns blowing. There were Ku Klux Klan signs and there was singing of the Alabama Trooper song. Children in the crowd were playing various musical instruments such as a cymbal, trumpet and drum.

Rocks and eggs were also being thrown at the marchers from the crowd. The police were dodging the rocks and eggs and attempted to catch the persons who threw them. Sergeant Golden explained the problem. "You could see these teen-agers behind the crowd. You could see a boil of activity and something would come over our heads and I or my partner would go down to try to apprehend who was doing it. You couldn't see who was doing it. They would vanish into the crowd." He further testified that about 9:25 P.M., "They were saying, 'Let's get them,' and with this they would step off the curb to try to cross 35th Street and we would push them back with force. Once in a while somebody would run out, and we would grab ahold of them and throw them back into the crowd."

About 9:30 P.M. Commander Pierson told Gregory the situation was dangerous and becoming riotous. He asked Gregory if he would co-operate and lead the marchers out of the area. The request to leave the area was made about five times. Pierson then told the marchers that any of them who wished to leave the area would be given a police escort. Three of the marchers accepted the proposal and were escorted out of the area. The remaining demonstrators were arrested and taken away in two police vans.

(Opinion of the Supreme Court of Illinois)

While we have gone into considerable detail in describing the events leading to the arrest of defendants, only a complete reading of the record can give one a true picture of the dilemma confronting the police. During the entire march from 4:30 P.M. until 9:30 P.M. the marchers were accompanied by their attorney who advised them, and the police were accompanied by an assistant city attorney who advised them. In short the record shows a determined effort by the police to allow the marchers to peacefully demonstrate and at the same time maintain order.

The defendants place heavy reliance on a footnote statement in *Brown* v. *Louisiana,* 383 U.S. 131, 133, 15 L. Ed. 2d 637, 86 S. Ct. 719, that "Participants in an orderly demonstration in a public place are not chargeable with the danger, unprovoked except by the fact of the constitutionally protected demonstration itself, that their critics might react with disorder or violence;" a statement in *Watson* v. *City of Memphis,* 373 U.S. 526, 535, 10 L. Ed. 2d 529, 83 S. Ct. 1314, 1320, quoted in *Cox* v. *Louisiana,* 379 U.S. 536, 551, 13 L. Ed. 2d 471, 85 S. Ct. 453, 462, that "The compelling answer to this contention is that constitutional rights may not be denied simply because of hostility to their assertion or exercise;" and a statement in *Wright* v. *Georgia,* 373 U.S. 284, 293, 10 L. Ed. 2d 349, 83 S. Ct. 1240, 1246, that "* * * the possibility of disorder by others cannot justify exclusion of persons from a place if they otherwise have a constitutional right * * * to be present." They contend that their conduct was peaceful and that they were charged and convicted solely on the reaction of the crowd.

(Opinion of the Supreme Court of Illinois)

The Supreme Court in recent years has had occasion to reverse a number of breach-of-the-peace convictions based on civil rights activities. In none of these cases has there been a public disorder or imminent threat of public disorder. *Garner* v. *Louisiana,* 368 U.S. 157, 7 L. Ed. 2d 207, 82 S. Ct. 248, involved sit-ins by Negroes at lunch counters catering only to whites. The court pointed out, "Although the manager of Kress' Department Store testified the only conduct which he considered disruptive was the petitioners' mere presence at the counter, he did state that he called the police because he 'feared that some disturbance might occur.' However, his fear is completely unsubstantiated by the record." (368 U.S. 157, 171, 7 L. Ed. 2d 207, 218, 82 S. Ct. 248, 255.) *Taylor* v. *Louisiana,* 370 U.S. 154, 8 L. Ed. 2d 395, 82 S. Ct. 1188, concerned a sit-in by Negroes in a waiting room at a bus depot, reserved "for whites only." The court noted, "• • • immediately upon petitioners' entry into the waiting room many of the people therein became restless and that some onlookers climbed onto seats to get a better view. Nevertheless, respondent admits these persons moved on when ordered to do so by the police. There was no evidence of violence." (370 U.S. 154, 155, 8 L. Ed. 2d 395, 396, 82 S. Ct. 1188, 1189.) *Edwards* v. *South Carolina,* 372 U.S. 229, 9 L. Ed. 2d 697, 83 S. Ct. 680, involved a peaceful march by Negroes around the State House. The court commented, "There was no violence or threat of violence on their [marchers] part, or on the part of any member of the crowd watching them. Police protection was 'ample'." (372 U.S. 229, 236, 9 L. Ed. 2d 697, 702, 83 S. Ct. 680, 684.) *Wright* v. *Georgia,* 373 US. 284, 10 L. Ed. 2d 349, 83 S. Ct. 1240, concerned 6 Negro boys playing

basketball in a public park. The court noted, "The only evidence to support this contention is testimony of one of the police officers that 'The purpose of asking them to leave was to keep down trouble, which looked like to me might start—there were five or six cars driving around the park at the time, white people.' But that officer also stated that this 'was [not] unusual traffic for that time of day.' And the park was 50 acres in area." (373 U.S. 284, 289, 10 L. Ed. 2d 349, 355, 83 S. Ct. 1240, 1245.) *Cox* v. *Louisiana,* 379 U.S. 536, 13 L. Ed. 2d 471, 85 S. Ct. 453, involved the conviction of the leader of some 2,000 Negroes who demonstrated in the vicinity of a courthouse and jail to protest the arrest of fellow demonstrators. The court explained, "There is no indication, however, that any member of the white group threatened violence. * * * As Inspector Trigg testified, they could have handled the crowd." (379 U.S. 536, 550, 13 L. Ed. 2d 471, 481, 85 S. Ct. 453, 462.) Finally *Brown* v. *Louisiana,* 383 U.S. 131, 15 L. Ed. 2d 637, 86 S. Ct. 719, concerned a sit-in by 5 Negroes in the reading room of a public library maintained on a racially segregated basis. The court mentioned, "There was * * * no disorder, no intent to provoke a breach of the peace and no circumstances indicating that a breach might be occasioned by petitioners' actions." (383 U.S. 131, 141, 15 L. Ed. 2d 637, 644, 86 S. Ct. 719, 723.) The court in two of these cases, *Cox* and *Edwards,* in commenting on the lack of violence or threat of violence remarked that the situations were "a far cry from the situation in *Feiner* v. *New York,* 340, U. S. 315, 95 L. Ed. 295, 71 S. Ct. 303."

In *Feiner* v. *New York,* 340 U.S. 315, 319, 95 L. Ed. 295, 299, 71 S. Ct. 303, 306, defendant was convicted of

disorderly conduct when he refused a police order to stop haranguing about 80 "restless" listeners. The court pointed out: "The exercise of the police officers' proper discretionary power to prevent a breach of the peace was thus approved by the trial court and later by two courts on review. The courts below recognized petitioner's rights to hold a street meeting at this locality, to make use of loud-speaking equipment in giving his speech, and to make derogatory remarks concerning public officials, and the American Legion. They found that the officers in making the arrest were motivated solely by a proper concern for the preservation of order and protection of the general welfare, and that there was no evidence which could lend color to a claim that the acts of the police were a cover for suppression of petitioner's views and opinions." The court concluded, "The findings of the state courts as to the existing situation and the imminence of greater disorder coupled with petitioner's deliberate defiance of the police officers convince us that we should not reverse this conviction in the name of free speech." 340 U.S. 315, 321, 95 L. Ed. 295, 300, 71 S. Ct. 303, 307.

In his dissenting opinion Justice Black stated "The Court's opinion apparently rests on this reasoning: The policeman, under the circumstances detailed, could reasonably conclude that serious fighting or even riot was imminent; therefore he could stop petitioner's speech to prevent a breach of peace; accordingly, it was 'disorderly conduct' for petitioner to continue speaking in disobedience of the officer's request." (340 U.S. 315, 325, 95 L. Ed. 295, 302, 71 S. Ct. 303, 309.) He then stated the record failed to show any imminent threat of riot or un-

controllable disorder. He next stated "The police of course have power to prevent breaches of the peace. But if, in the name of preserving order, they ever can interfere with a lawful public speaker, they first must make all reasonable efforts to protect him." (340 U.S. 315, 326, 95 L. Ed. 295, 303, 71 S. Ct. 303, 309.) Finally he disagreed with the majority's "statement, that petitioner's disregard of the policeman's unexplained request amounted to such 'deliberate defiance' as would justify an arrest or conviction for disorderly conduct. • • • For at least where time allows, courtesy and explanation of commands are basic elements of good official conduct in a democratic society. • • • Petitioner was entitled to know why he should cease doing a lawful act." 340 U.S. 315, 327, 95 L. Ed. 295, 304, 71 S. Ct. 303, 310.

Justice Frankfurter in a concurring opinion summarized the situation this way: "As was said in *Hague* v. *C.I.O.*, 307 U.S. 496, 83 L. Ed. 1423, 59 S. Ct. 954, *supra*, uncontrolled official suppression of the speaker 'cannot be made a substitute for the duty to maintain order.' 307 U.S. at 516. [59 S. Ct. at 964, 83 L. Ed. 1423.]' Where conduct is within the allowable limits of free speech, the police are peace officers for the speaker as well as for the hearers. But the power effectively to preserve order cannot be displaced by giving a speaker complete immunity. • • • *It is not a constitutional principle that, in acting to preserve order, the police must proceed against the crowd, whatever its size and temper, and not against the speaker.*" (Emphasis added.) 340 U.S. 273, 288, 95 L. Ed. 271, 279, 71 S. Ct. 328, 336.

Applying the facts of this case to the rationale of the foregoing opinions we believe defendants were not de-

nied their right to free speech, free assembly and freedom to petition for redress of grievances. First, the record is clear that there was some violence (throwing rocks and eggs) and an imminent threat of extreme public disorder. This immediately distinguishes this case from *Garner, Taylor, Edwards, Cox, Wright* and *Brown* discussed above. In fact the violence and imminent threat of a riot appears to have been greater here than in *Feiner.*

This brings us to the vital issue in the case of whether Justice Frankfurter's appraisal of *Feiner* that "It is not a constitutional principle that, in acting to preserve order, the police must proceed against the crowd, whatever its size and temper, and not against the speaker" can be reconciled with the statement in *Brown* that "Participants in an orderly demonstration in a public place are not chargeable with the danger, unprovoked except by the fact of the constitutionally protected demonstration itself, that their critics might react with disorder or violence." We think the statements are harmonious when read in light of Justice Black's observation in his dissenting opinion in *Feiner* that "The police of course have power to prevent breaches of the peace. But, if, in the name of preserving order, they ever can interfere with a lawful public speaker, they first must make all reasonable efforts to protect him."

The record before us shows that the police made all reasonable efforts to protect the marchers before asking them to stop the demonstration. While no parade permit had been sought by the group and there had been no direct contact between representatives of the group and the police, the police did know of the planned march and a

task force of 44 policemen were assigned to maintain order during the march. The 44 policemen went to Buckingham Fountain in Grant Park at 4:00 P.M. and accompanied the demonstrators while they marched to the city hall for a short demonstration and then marched about 5 miles south to 35th and Lowe. The police kept hostile spectators from interfering with the march around the block bounded by 35th Street, Union Avenue, 36th Street and Lowe Avenue. The taverns in the area were closed, barricades were placed at strategic points, there was radio communication among the police assigned to the area, and spectators were kept across the street. Water sprinklers which were turned on during the demonstration and interfered with the march were removed, persons in doorways were told to get back and close the doors, counter-demonstrators who tried to join the marchers were ordered across the street, a group of 150 countermarchers were ordered out of the demonstrators' line of march, and a pathway was cleared through several hundred spectators when the marchers deviated from their course around the block in which the mayor lived, and spectators who broke police lines and tried "to get" the demonstrators were forcefully thrown back into the crowd. Before the demonstration was ended there were about 100 policemen trying to maintain order in this one block area.

It is evident that there was adequate and determined police protection for the demonstrators from 4 o'clock in the afternoon until 9:30 in the evening while the demonstrators marched from Grant Park to the city hall and then to the mayor's home on the south side of Chicago. The demonstration around the mayor's home lasted 1½

hours during which the police were able to control the hostile crowd. It was between 9:00 and 9:25 that the crowd grew quickly in size and anger to the point where the police felt they could no longer control the situation.

Furthermore, we do not have here an "unexplained request" by the police as was apparently the case in *Feiner.* Commander Pierson told Gregory that the situation was becoming dangerous, that he was having difficulty containing the crowd and that there might be a riot. He asked Gregory five times to lead the marchers out. Gregory then went along the line of marchers and said "We will not leave; we have not broken any law; we will not resist if we are arrested." Commander Pierson then told the demonstrators that any of them who wished to leave would be given a police escort out of the area. After three of the demonstrators left, the rest were arrested.

We hold that under the circumstances of this case defendants were not denied any right of free speech, free assembly or freedom to petition for redress of grievances.

Defendants also argue that the disorderly conduct ordinance of the city is unconstitutionally vague as applied to free expression and free assembly. We interpret the ordinance as authorizing the action taken by police under the circumstances disclosed by this record. (See *City of Chicago* v. *Williams,* 45 Ill. App. 2d 327.) It does not authorize the police to stop a peaceful demonstration merely because a hostile crowd may not agree with the views of the demonstrators. It is only where there is an imminent threat of violence, the police have made all reasonable efforts

to protect the demonstrators, the police have requested that the demonstration be stopped and explained the request, if there be time, and there is a refusal of the police request, that an arrest for an otherwise lawful demonstration may be made. As so interpreted we believe the ordinance is not so overly broad in scope as to be unconstitutionally vague or that it delegates undue discretion to the police. This is the type of conduct with which we are here faced and which is prohibited by the ordinance.

It is also argued that the magistrate committed reversible error by instructing the jury that there was an ordinance requiring a permit for a parade or open air public meeting. A reading of the instructions as a whole convinces us that this instruction would not mislead the jury or prejudice the defendants. The instructions clearly state that defendants were charged with disorderly conduct and the forms of verdict dealt only with disorderly conduct.

The judgments of the circuit court of Cook County are affirmed.

Judgments affirmed.

MR. JUSTICE WARD took no part in the consideration or decision of this case.

Edwards v. South Carolina, 372 U. S. 229, 235 (1963) .. 7
City of Chicago v. Williams, 45 Ill. App. 2d 327 (1963). 7
City of Chicago and People v. Lambert, 47 Ill. App. 2d 151 (1963) 7
Terminiello v. Chicago, 337 U. S. 1 (1949) 8
United States v. Petrillo, 332 U. S. 1 (1947) 8
Kosowski v. McDonald Elevator, 33 Ill. App. 2d 386, 396-397 (1962) 9
Loucks v. Pierce, 341 Ill. App. 253 (1950) 9
Wolin v. Port of New York Authority, ... F. 2d ..... (2d Cir. March 1, 1968), 36 U. S. Law Week 2550, 2551 (1968) 9

Miscellaneous.

Municipal Regulation of Free Speech, Illinois Law Review, Vol. 46, p. 496 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 1336

CITY OF CHICAGO, A MUNICIPAL CORPORATION,
Respondent,

vs.

DICK GREGORY, ET AL.,
Petitioners.

ON PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT.

RESPONDENT'S BRIEF IN OPPOSITION.

OPINION BELOW.

The opinion of the Supreme Court of Illinois is reported at 39 Ill. 2d 47, 233 N. E. 2d 422 (1968).

QUESTION PRESENTED.

Whether pickets can invade a residential neighborhood where the Mayor of Chicago lives, in the night-time, and, while being protected by police, chant invective and scurrilous words directed at the Mayor, which action incites people of the neighborhood to become an unruly, threatening mob, and, after being requested by the police five times to desist and march out of the neighborhood to prevent a riot, refuse the request under the claim of First Amendment rights?

IPREME COURT, U. S.

FILED

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 60

CITY OF CHICAGO, A MUNICIPAL CORPORATION,
Respondent,

vs.

DICK GREGORY, ET AL.,
Petitioners.

ON PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT.

RESPONDENT'S BRIEF IN OPPOSITION.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO [redacted] 56

INDEX.

	PAGE
Opinion Below	1
Question Presented	1
Statement	2
Reasons for Denying the Writ	4
I. Freedom of speech is not unqualified, it has allowable limits	4
II. The defendants were guilty of violating the Municipal Ordinance	7
III. The instruction given on the lack of a parade permit was harmless and did not deprive the defendants of any rights guaranteed under the Constitution	9
Wolin v. Port of New York distinguished	9
Conclusion	10

CITATIONS.

Cases.

Feiner v. New York, 340 U. S. 315, 319, 321 (1951)	6
Cox v. Louisiana, 379 U. S. 536, 551 (1965)	4, 6
People v. Turner, 265 N. Y. S. 2d 841, 850-851, 853 (1965), *aff'd*, 17 N. Y. 2d 829, writ of certiorari dismissed as improvidently granted Sup. Ct. of U. S., Turner v. New York, 386 U. S. 773 (1967)	4
Adderley v. Florida, 385 U. S. 39 (1966)	4, 7
Watson v. City of Memphis, 373 U. S. 526, 535	5
Niemotko v. Maryland, 340 U. S. 268, 282 (1950)	6

STATEMENT.

The Statement on pages 4-7 of the Petition is biased and it omits important facts. The following is supplied as a supplement to the petitioners' statement.*

When the marchers formed at Buckingham Fountain, the defendant, Gregory, addressed them and said they would march to "Snake Daley's house—the Snake Pit", and that "they would continue to keep going there until he [Daley] fired Ben Willis" (Rec. 218).

The police were assigned to *protect* the marchers (Appendix to Petition, p. 3a). To protect the marchers the police kept spectators across the street from them and ordered taverns closed during the march (Appendix of Petition, p. 5a). Gregory himself testified to instances where the police kept the crowd that was gathering from interfering with the march (Appendix of Petition, p. 6a; Rec. 623, 630, 632, 652).

Enroute to the house of Mayor Daley and while marching around the block where the Mayor's home is located, the defendants chanted: "Ben Willis must go, Snake Daley, also" (Rec. 107); "Ben Willis must go—When?—Now!—Ben Willis must go and Snake Daley also" (Rec. 266-267); "Ben Willis must go—hey, hey, what do you know, Daley must go"; "We are going to the home of the Snake, the Snake Pit is down the street" (Rec. 538-539). The marchers were accompanied by their attorney (Appendix to Petition, p. 4a).

The crowd increased to at least 1000 or 1200 in number and it became an unruly mob (Rec. 108, 115, 277, 299). There was testimony that there were 1200 people on 35th Street and a similar number on 36th Street (Rec. 527).

* The facts herein are summarized from the Record and from the facts as found by the Supreme Court of Illinois in its decision.

The police protecting the marchers were dodging missiles and eggs thrown from the midst of the crowd (Rec. 403, 478, 495, 507, 524). The police commander instructed the officers to apprehend the missile throwers but due to the crowd size and the commotion they were unable to do so (Rec. 117, 507). In addition to throwing missiles, the crowd engaged in invective and made threats "to get" the marchers (Rec. 277, 283, 292). The police were constantly blocking and pushing back spectators who attempted to approach the marchers (Rec. 277, 278, 298). About 9:20 o'clock p.m. the people seemed to come from everywhere and the crowd became uncontrollable (Appendix of Petition, p. 6a; Rec. 300, 524).

About 9:30 o'clock p.m. the commander told Gregory that the situation was increasingly dangerous and becoming riotous. He requested Gregory about five times to cooperate by leading the marchers out of the area under police protection (Appendix of Petition, p. 7a; Rec. 551, 568). Gregory responded to the request of the commander by telling the marchers, "We are not going to leave. We will remain here. Let them arrest us" (Rec. 118, 407). Then the police commander advised the marchers they would be arrested if they still persisted. Three marchers voluntarily left under police protection, and those remaining were arrested (Appendix of Petition, p. 7a; Rec. 119-120).

During the trial an attorney for the marchers admitted to the jury that the evidence would show that a dangerous condition existed (Rec. 90).

The jury found the defendants guilty of disorderly conduct, judgment was entered on the verdict and five defendants were assessed fines of $200.00 each and 35 defendants were assessed fines of $25.00. The Supreme Court of Illinois affirmed the judgments.

REASONS FOR DENYING THE WRIT.

ARGUMENT.

For the following reasons, a writ of certiorari should not issue to review the decision of the Supreme Court of Illinois.

I.

Freedom of speech is not unqualified, it has allowable limits.

The record in the instant case establishes that the defendants were not prevented from expressing their viewpoints. Indeed, the facts show, and the Supreme Court of Illinois found, that not only were the police assigned to *protect* the demonstrators but that they performed the assignment in a highly professional manner. During the approximate five and one-half hours and many miles of the march, the police attended the demonstrators and protected them at all times. The police closed the taverns in the neighborhood; they kept the hostile spectators segregated from the pickets; they forced people to go into their homes and close their doors; they prevented spectators from blocking the line of march and from approaching the marchers; and finally, the police themselves received the main brunt of the eggs, rocks and missiles thrown at the pickets.

This Court has crystallized the rule, both in opinions rendered and by denying writs of certiorari, that First Amendment rights are not absolute at all times and under all circumstances. *Adderley* v. *Florida*, 385 U. S. 39 (1966); *Cox* v. *Louisiana*, 379 U. S. 536 (1965). In *People* v. *Turner*, 265 N. Y. S. 2d 841 (1965), *aff'd*, 17 N. Y. 2d 829 (1966),

where on May 8, 1967, the Supreme Court of the United States dismissed the writ of certiorari as improvidently granted (*Turner* v. *New York*, 386 U. S. 773 (1967)), the defendants were convicted of disorderly conduct when they refused several warnings to cease a street meeting protesting the Viet Nam war and where their protests were inciting the spectators. The Supreme Court of New York, Appellate Term, *People* v. *Turner*, 265 N. Y. S. 2d 841 said (pp. 850-851):

> "All these defendants clearly acted 'in such a manner as to annoy, disturb, interfere with, obstruct or be offensive to others.'
>
> "* * * There were no arrests made before the defendants conducted themselves in the manner set forth above and not before all of them were repeatedly warned to desist * * *."

The court continued (p. 853):

> "Our state courts have upheld *reasonable* action of the police in seeking to disperse street meetings in areas where a breach of the peace or possibility of disorder may arise—* * *." (Emphasis by Court.)

In the case at bar, as in *Turner*, there were no arrests made until the defendants had refused repeated requests to desist. The writ here should likewise be denied.

The decisions of this Court and of other courts of review have defined and fixed the rationale to be applied in cases where protesters assert deprivation of free speech. The reasoning is that neither the police nor statutes and ordinances may be used to suppress views simply because of hostility to their assertion or exercise (*Cox* v. *Louisiana*, 379 U. S. 536, 551; *Watson* v. *City of Memphis*, 373 U. S. 526, 535). In the instant case, the expression of the pickets was not suppressed. To the contrary, the defendants were carefully protected and defended which enabled them to express as much free speech as possible. In Municipal

Regulation of Free Speech, Illinois Law Review, Vol. 46, the writer states (p. 496):

> "The only reasonable answer must be based on the assumption that implicitly the Court has adopted a pragmatic approach in this area. It wants to permit as much free speech as possible; at the same time it does not want normal life to be reduced to chaos as a result of the exercise of First Amendment rights".

The foregoing statement is supported by many decisions of the Supreme Court of the United States. In *Niemotko* v. *Maryland*, 340 U. S. 268 (1950), Justice Frankfurter, in a concurring opinion, stated (p. 282):

> "The results in these multifarious cases have been expressed in language looking in two directions. While the Court has emphasized the importance of 'free speech,' it has recognized that 'free speech' is not in itself a touchstone. The Constitution is not unmindful of other important interests, such as public order, if interference with free expression of ideas is not found to be the overbalancing consideration."

In *Cox* v. *Louisiana*, 379 U. S. 536 (1965), both the majority opinion and the dissenting opinion of Justice Black contain language applicable to the instant case. Both opinions declare that the right to peaceful protest does not mean it can be engaged in at anytime or anyplace and that even the most peaceful protester has a plain duty and responsibility to obey the laws; and that it does not take away the State's duty and responsibility to maintain order.

In *Feiner* v. *New York*, 340 U. S. 315 (1951), this Court stated (p. 319):

> "Petitioner was thus neither arrested nor convicted for the making or content of his speech. Rather it was the reaction which it actually engendered."

This Court continued (p. 321):

> "It is one thing to say that the police cannot be used

> as an instrument for the suppression of unpopular views, and another to say that, when as here a speaker passes the bounds of argument or persuasion and undertakes incitement to riot, they are powerless to prevent a breach of the peace."

Clearly, the mere presence of the instant defendants was unpopular with the people living in the residential neighborhood they invaded, and the invective and insulting language directed at one resident, the Mayor of Chicago, incited his neighbors even further. Nevertheless, the police protected the pickets and protected their expressions of unpopular views for approximately two hours. Only when an uncontrollable riot became imminent did the police first explain the situation to the marchers and request them to leave. It was impossible to arrest the huge riotous crowd of spectators. Only when the marchers refused to comply with the order of the police to move on because of the situation were they arrested.

II.

The defendants were guilty of violating the Municipal Ordinance.

The Supreme Court of Illinois held that the ordinance of the City of Chicago authorized the action taken by the police under the circumstances disclosed by this record (Appendix to Petition, p. 15a). The reviewing courts of Illinois had previously ruled in numerous cases that the ordinance was valid (*City of Chicago* v. *Williams*, 45 Ill. App. 2d 327 (1963); *City of Chicago and People* v. *Lambert*, 47 Ill. App. 2d 151). In *Adderley* v. *State of Florida*, 385 U. S. 39 (1966), this Court held that the definition of the offense by the state court is binding on the Supreme Court of the United States. Likewise, in *Edwards* v. *South Carolina*, 372 U. S. 229 (1963), this Court declared (p. 235):

> "The state courts have held that the petitioners' conduct constituted breach of the peace under state law, and we may accept their decision as binding upon us to that extent."

In *Terminiello* v. *Chicago,* 337 U. S. 1 (1949), cited in the Petition, p. 9, this Court said (p. 6) that "the pinch of the statute is in its application. It is that question which the petitioner has brought here." It is precisely the utter difference in facts, and, hence application of the ordinance, which establishes the inapplicability of the decision in *Terminiello* to the instant case. In *Terminiello,* the protester hired a hall and there gave vent to a speech loaded with invective and insult which caused the audience to threaten to riot—the audience had voluntarily attended, or invaded, the hall. In the instant case the protesters, defendants here, had invaded the neighborhood of the crowd which became riotous. Furthermore, the defendants were accompanied by their own attorney, and, in addition, the defendants were fully aware that their refusal to cooperate with the police warranted their arrest since it was their leader, Gregory, who said, "We are not going to leave. We will remain here. Let them arrest us" (Rec. 118, 407). It was only after this refusal that the police stated they would arrest the defendants. Thus, it is evident that the defendants were aware of the sanctions they would suffer if they persisted in their activities. They had adequate warning that their conduct was prohibited (*United States* v. *Petrillo,* 332 U. S. 1 (1947).

In an unrelated case a Judge of the United States District Court, Northern District of Illinois, Eastern Division, No. 67 C 1863, entered an order holding the ordinance invalid. Notice of Appeal has been filed by the City of Chicago from this order. The ordinance under which petitioners were fined has been superseded by an amendment to the Municipal Code of Chicago the effect of which is to obviate any

future charges being processed under the former ordinance and to that extent, at least, the question of the validity of the former ordinance has become moot.

III.

The instruction given on the lack of a parade permit was harmless and did not deprive the defendants of any rights guaranteed under the Constitution.

The Supreme Court of Illinois ruled that the instruction given to the jury relating to the ordinance requiring a parade permit did not mislead the jury or prejudice the defendants (Appendix to Petition, p. 16a). The reviewing courts of Illinois have repeatedly ruled that a verdict of a jury cannot be disturbed in the absence of a determination on the part of the reviewing court that the verdict is against the manifest weight of the evidence. *Loucks* v. *Pierce,* 341 Ill. App. 253 (1950). The object of review is to determine whether the record is free of error prejudicial to the party's rights and that if upon the facts it is a reasonable assumption that no different verdict would be reached on another trial, and, that if the judgment rendered is the only one consistent with the evidence and law in the case, an error in instruction is not reversible error. *Kosowski* v. *McDonald Elevator,* 33 Ill. App. 2d 386, 396-397 (1962).

In the instant case the petitioners were found guilty only of violating the ordinance relating to disorderly conduct and on review the Supreme Court of Illinois held that the record sustained the judgment of the trial court.

Wolin v. *Port of New York Authority* Distinguished.

The petitioners included in the "Conclusion" to the Petition a quotation from *Wolin* v. *Port of New York Authority,* ..... F. 2d ..... (2d Cir., March 1, 1968), 36 U. S. Law Week 2550, 2551 (Petition, p. 12). That decision is cited out of

context and without reference to the facts involved herein. Wolin attempted to set up a table in the terminal to pass out literature, display placards and engage in conversation with others in order to publicize his viewpoint on public issues. The question considered by the Court was whether the terminal officials could refuse to permit Wolin's activities based on a statute which bars miscreants and disorderly persons from the terminal. The Court stated that it was beyond dispute that the congestion and controversy that may attend the activity in the terminal, while pertinent to the enactment of rules and regulations to govern the activity, could not be invoked to support a flat prohibition.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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May 13, 1968.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted]60

CITY OF CHICAGO, a Municipal Corporation,

Respondent,

v.

DICK GREGORY, et al.,

Petitioners.

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1336

CITY OF CHICAGO, a Municipal Corporation,

Respondent,

v.

DICK GREGORY, et al.,

Petitioners.

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I. The Protected Conduct in Logan Valley Plaza Would Not Have Been Subject to Sanction If the Shopping Center Occupants Had Turned Violence on the Pickets. The Same Applies Here.

The shopping center case, *Amalgamated Food Employees* v. *Logan Valley Plaza, Inc.*, ... U.S. ....., (36 Law Week 4385, May 20, 1968), holds demonstrations unaccompanied by threat or violence to be protected First Amend-

ment activity (at pp. 4385, 4388). In that case the pickets entered the area of the shopping center, an area the Court held to be open to the public at large, and peacefully displayed their contentions against the super market operator. The Court held that the pickets were not subject to injunction or other sanction (at p. 4388). Would the decision change if the super market's employees, customers or others using the center, had besieged the peaceful pickets, hailed them with invective, epithets, eggs and rocks? Would this illegal conduct make the peaceful actions of the pickets illegal? It is absurd to say yes, but this is the position of the City in this case.

The City concedes the only violence was by the spectators, and that this was merely done because of the presence of the demonstrators in the neighborhood.

The demonstrators were peaceful.

First, the City concedes that the record shows that the defendant demonstrators were peaceful, and the only activity the City complains of here occurred under police surveillance, either hours before the arrest (at Buckingham Fountain, miles away from the Mayor's house) or near the eventual scene of the arrest (where the same signs were carried and songs chanted as at the Fountain), and the City agrees that pursuant to police order, no demonstrator raised his voice, sang, or chanted after 8:20 p.m. (see City Brief, pp. 2-3, 7).(*) This distinguishes

(*) Most of the conduct referred to by the City occurred in the afternoon, at the Fountain, when police and prosecutors were present. The same police and prosecutors were present when the demonstrators marched some six or seven miles. At the scene the police permitted the marchers to continue, and set out their route. At the police request, the marchers were silent after 8:20 p.m. There were no new signs or symbols added after arriving at the scene. The Mayor was never present.

Turner, (City Brief, p. 4). In *Turner* the Court held the demonstrators changed their conduct from speech to obstruction. In the present case defendants continued their speech but made it silent. They never obstructed.

The demonstrators remained in the public way.

The City also concedes that the record shows that the demonstrators limited their march to the public sidewalk and to that portion of the sidewalk designated for them by the police.

It was the hecklers who were violent.

Further, the City concedes that the invective threat and violence were by the crowd, it was the crowd that was unruly, and that except for their presence, the demonstrators gave the members of the crowd no cause for their conduct (Brief, pp. 2-3, 7).

The City's position is therefore that the hecklers here have the right to veto, even without obstruction by the demonstrators, but does so in the face of *Brown* (Pet. Br., p. 8). The City, however, attempts to blur this issue by phrasing this case as a refusal to obey a police order to disperse, but that is not the charge. The City also attempts to avoid *Brown,* claiming that the police were excused from attempting to arrest the hecklers, but the record shows that no attempt to arrest was made.

The neighborhood involved is not private property; The crowd voluntarily gathered there.

The City attempts to distinguish *Terminiello* (Brief, p. 8) claiming that defendants "invaded" the Mayor's neighborhood and that the violent hecklers were a "captive

audience". This argument fails as the *Logan* super market case establishes that such "invasion" by pickets or demonstrators, even of a shopping center (*a fortiori* an entire section of the city) does not remove them from First Amendment protection, and the record shows that the hecklers were not "captive" (The defendants' demonstration was essentially silent and no onlooker was required to stay c.f. *Saia* v. *New York*, 334 U.S. 558, at 562), and this is not a basis for terminating defendants' protected demonstration under a general disorderly conduct ordinance.

The demonstrators did not use invective or incite violence.

The City seeks to have this Court extend *Feiner* beyond its limited holding (pp. 6, 7), "and to convict a speaker whenever the crowd turns hostile, even where the speaker fails to exceed" the bounds of argument or persuasion and undertakes incitement to riot. None of this occurred in this case and defendants' acquiescence to the arrest (Brief p. 3) does not validate the arrest or establish any basis for the conviction.

The City establishes that the ordinance is vague: The decision of when a violation occurs is left to the police.

The City totally ignores the vagueness of the ordinance, but by basing its argument upon the demonstrators' refusal to obey a request by police to disperse as a basis to uphold the decision below, the City by definition seeks a decision making the question of when the ordinance is violated to be left to the policeman—to be made on the spot—and thus the ordinance is void for vagueness. (Pet. Br., p. 9)

The City concedes that the vagueness issue is not moot and the Landry decision does not affect the convictions in this case.

The City obliquely suggests (Br., pp. 8-9) that the vagueness issue may be moot because of the decision of the District Court in *Landry* v. *Daley,* but removes any chance of moctness by noting that it is appealing from the *Landry* decision.

Finally, the Court (Br., pp. 9-10) slurs over *Wolin,* ignoring its content, and the City asks the Court to ignore the harm caused by the instruction on the parade permit.

CONCLUSION.

For the reasons set out, the Court should grant review, strike down the "heckler's veto", and reverse the decision below.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 60

DICK GREGORY, et al.,

Defendants-Appellants,

v.

CITY OF CHICAGO, a Municipal Corporation,

Plaintiff-Appellee.

BRIEF OF APPELLANTS

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INDEX

	PAGE
Opinion Below	2
Jurisdiction	2
Municipal Ordinances and Constitutional Provisions Involved	2
Questions Presented for Review	3
Statement of the Case	4
Summary of Argument	8
Argument:	
I. Where Demonstrators Are Peaceful, A Conviction Of Disorderly Conduct Must Be Reversed When It Is Based Only On The Reaction Of The Spectators To The Unpopular Views Of The Demonstrators	9
II. The Chicago Disorderly Conduct Ordinance Is Unconstitutionally Overbroad And Vague And Should Be Struck Down	20
III. The Defendants Were Prejudiced By An Instruction On A Parade Permit Ordinance—Where The City Prosecutor Argued The Point To The Jury—When No Permit Was Required And No Violation Of The Parade Ordinance Charged	27
Conclusion	29

List Of Authorities Cited

Cases:

d. Adderley v. Florida, 385 U.S. 39 (1966) 11
Amalgamated Food Employees v. Logan Valley Plaza, Inc., 88 S. Ct. 1601 (1968) 11, 18
d. Beauharnais v. Illinois, 343 U.S. 250 (1952) 18
Brown v. Louisiana, 383 U.S. 131 (1966) 11, 21, 25
d. Chaplinsky v. New Hampshire, 315 U.S. 568 (1942) 18
d. City v. Hunt, 374 Ill. 234, 29 N.E. 2d 86 (1940) 25
City of Chicago v. Williams, 45 Ill. App. 2d 327, 195 N.E. 2d 425 (1963) 15
Cox v. Louisiana, 379 U.S. 536 (1965) 13, 14, 15, 21, 25, 26, 27
Edwards v. South Carolina, 372 U.S. 229 (1963) .. 12, 21
d. Feiner v. New York, 340 U.S. 315 (1951) 18
Fields v. South Carolina, 375 U.S. 44 (1963) 12
Garner v. Louisiana, 368 U.S. 157 (1961) 14
Hague v. C.I.O., 307 U.S. 496 (1939) 10
Henry v. City of Rock Hill, 376 U.S. 776 (1964) 12
Landry v. Daley, 280 F. Supp. 968 (N.D. E.D. Ill., 1968) 21
Marsh v. Alabama, 326 U.S. 501 (1946) 11
Martin v. City of Struthers, 319 U.S. 141 (1943) .. 11
NAACP v. Button, 371 U.S. 415 (1963) 26
d. People v. Levner, 30 N.Y.S. 2d 487 (1941) 19
d. People v. Turner, 265 N.Y.S. 2d 841 (1965) 19
State v. Brown, 126 S.E. 1 (1962) 12
Terminiello v. Chicago, 337 U.S. 1 (1949) 14, 20
d. Turner v. New York, 386 U.S. 773 (1967) 19

d. United States v. Woodard, 376 P. 2d 136 (1967) 19, 25
Watson v. City of Memphis, 373 U.S. 526 (1963) 15
Williams v. Wallace, 240 F. Supp. 100 (1965) 18
Wolin v. Port of Authority of New York, 392 F. 2d 83 (2nd Cir., 1968) 19
Wright v. Georgia, 373 U.S. 284 (1963) ..... 15, 21, 25.

Others:

Haiman, *The Rhetoric of the Streets, Some Legal and Ethical Considerations,* Quarterly Journal of Speech, Vol. III, No. 2 (1967) 17
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Kalven, *The Negro and the First Amendment,* (1965) 9, 14, 15
Kamin, *Residential Picketing and the First Amendment,* 61 N.U.L. Rev. 177 (1966) ..... 11.

In The

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October Term, 1968

No. 60

DICK GREGORY, et al.,

Defendants-Appellants,

v.

CITY OF CHICAGO, a Municipal Corporation,

Plaintiff-Appellee.

BRIEF OF APPELLANTS

OPINION BELOW.

Appellants ask this Court to reverse the judgment of the Illinois Supreme Court reported at 39 Ill. 2d 47, 233 N.E. 2d 422 (1968), and set out in full as an appendix to the petition for a writ of certiorari in this case.

JURISDICTION.

Defendants ask for reversal where they were convicted of disorderly conduct under the Municipal Code of Chicago, Section 193-1, affirmed by the Illinois Supreme Court on January 19, 1968. This Court granted defendant's petition for a writ of certiorari. Jurisdiction is invoked under U.S.C. Section 1257.

MUNICIPAL ORDINANCES AND CONSTITUTIONAL PROVISIONS INVOLVED.

Municipal Code of Chicago, Section 193-1

All persons who shall make, aid, countenance, or assist in making any improper noise, riot, disturbance, breach of the peace, or diversion tending to a breach of the peace, within the limits of the city; all persons who shall collect in bodies or crowds for unlawful purposes, or for any purpose, to the annoyance or disturbance of other persons; . . . shall be deemed guilty of disorderly conduct, and upon conviction thereof, shall be severally fined not less than one dollar nor more than two hundred dollars for each offense.

United States Constitution, Fourteenth Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Constitution, First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

QUESTIONS PRESENTED FOR REVIEW.

Whether peaceful demonstrators:

1. Are guilty of disorderly conduct as a result of invective and threat of violence of their hecklers?

2. May be convicted under a disorderly conduct ordinance that leaves discretion in the police of which First Amendment conduct is proscribed?

3. Are denied a fair trial where in a jury trial on disorderly conduct the prosecution gets an instruction on a parade permit where no permit was required?

STATEMENT OF THE CASE.

On August 2, 1965, defendants and others protesting public school conditions in Chicago, met at Buckingham Fountain, marched to City Hall and conducted a brief demonstration, and continuing under police scrutiny, continued to the home of the Mayor on the 3500 block on South Lowe Street (R. 105-106). The marchers went four times around the block (R. 623). They were peaceful and well disciplined (R. 146, 161, 184, 558, 616-617). They carried placards protesting conditions in the schools and calling for the removal of the general superintendent of schools (R. 106, 538, 539, 644-645). They did not shout or throw things, and pursuant to a police suggestion, they ceased all singing after 8:20 p.m. (R. 137, 153-154, 161-162, 184, 548, 558, 613-615). Except when prevented from doing so by hostile onlookers, or by sprinkler hoses that had been set and turned on in their path, (R. 150, 618, 623), the marchers kept to the public sidewalks along their way in double file (R. 148, 159, 618). They varied their route on the fourth trip around the block to avoid 100 to 150 spectators who had begun their own march (R. 632, 633-634). They waited for signals either from the police or from an assistant corporation counsel before proceeding (R. 632, 635, 636). Police Commander Pierson, in charge of the police officers present, stopped the marchers on 35th Street, near Lowe (R. 162-163), at a time when the crowd of spectators had grown to about 1,000 to 1,200 persons (R. 162-163), and after a number of spectators had shouted, yelled, made threats, obscene gestures and remarks, and used invective and demeaning

terms at the marchers (R. 108, 116, 130, 133, 137, 160, 184-185, 549, 554, 621), and after a number of spectators had hurled rocks, eggs, or bottles at the marchers (R. 112, 114-115, 120-121, 154, 160, 184-185, 554). It is disputed whether Commander Pierson told the marchers, through defendant Gregory who acted as their spokesman, that they would be permitted two more trips around the block and then be requested to leave (R. 638, 639-640, 660), or whether the Commander directly requested the marchers to leave, because he thought the situation was becoming increasingly dangerous (R. 114, 118, 551). The Commander testified that when none of the marchers elected to leave, he used a loud-speaker and asked them to leave because "their presence here might incite a riot, because the crowd was unruly." (R. 552, 568). He told them that if they persisted in marching they would be arrested (R. 553, 569). He offered police escorts through the hostile crowd to those marchers who were willing to leave, and three or four did accept (R. 119, 189, 310, 553). The Commander repeated his request to the rest of the marchers about five times and then ordered their arrest (R. 119-120, 209, 567). Pursuant to instructions from defendant Gregory, each marcher was peaceful and cooperative, and walked into police vans when arrested (R. 553, 643-644).

Defendants were charged with violation of separate provisions of Section 193-1 of the Municipal Code of Chicago, that they (R. 2) "Did make or aid in making an improper noise, riot, disturbance, breach of peace, or diversion tending to a breach of the peace, within the limits of the city," and that they (R. 803) "Did collect in a crowd or body for unlawful purposes or for purposes to the annoyance or disturbance of other persons."

Defendants' pre-trial motions to dismiss the complaints (R. 69) were denied and defendant Gregory and four others were tried by jury. On a stipulation of facts, the charges against the other 35 defendants were later determined on the same record.

At the trial the court over objection permitted the city to introduce testimony of statements attributed to defendant Gregory at Buckingham Fountain. The statements, made some four hours prior to the incident at issue, occurred in the presence of the police who made no arrests at that time and who permitted the defendants to march through the downtown area and then south to 35th Street (R. 104-106) in their presence. Also over objection the city was permitted to show that none of the defendants had parade permits (R. 97, 100). In closing argument the City prosecutor repeatedly stated that the demonstrators were without a parade permit, and implied that a permit was required (R. 759, 764, 781, 784). And over objection the court gave an instruction to the jury in the language of the "parade permit" ordinance (Section 36-31 of the Municipal Code of Chicago), although no violation of that ordinance was charged against the defendants (R. 751, 796-797). Defendants were repeatedly not permitted to cross examine as to whether arrests of the spectators were made (R. 139, 144, 510). In those instances where such cross examination was allowed, the city's witnesses testified that no spectators were arrested (R. 530). Neither were defendants permitted to show a "lawful" purpose for their conduct (R. 645-646). The court over objection read the two provisions of Section 193-1 to the jury as an instruction (R. 719, 795), although defendants' instruction in the

terms of constitutional provisions on free speech, assembly, and petition was refused (R. 668).

Defendants' motion for a directed verdict of acquittal was denied and written post trial motions were denied (R. 597, 25), and judgment was entered on the verdict and defendant Gregory and four others were fined $200.00, on each charge, and on a stipulation of facts, the other 35 defendants were fined $25.00 on each charge.

On review, the Illinois Supreme Court held (Appendix, p. 15a) that defendants were not denied their right to free speech, free assembly, and freedom to petition for redress of grievances. The Court held (Appendix, p. 13a) that all reasonable efforts were made to protect the demonstrators, even though the record shows (R. 475, 476, 478, 530) that none of the threatening spectators was arrested and no attempt was made to disperse the crowd. The Court ruled (Appendix, p. 16a) that the Chicago disorderly conduct ordinance was not unconstitutionally vague or overbroad even as applied to free expression and free assembly. Finally, the Court decided (Appendix, p. 16a) that it was not prejudicial error to instruct the jury on the Chicago parade permit ordinance, even though defendants were not charged under that ordinance and no permit would have been required. Petitioners seek review of this decision.

SUMMARY OF ARGUMENT.

The Chicago disorderly conduct ordinance was applied so as to thwart defendants' peaceful conduct that was protected under the First Amendment, and defendants were convicted for the threats and violence of spectators who chose to heckle them on the public way (Point I). The ordinance itself is vague when applied to First Amendment activity, proscribes protected conduct, is without standards, and leaves discretion to the police as to when protected conduct becomes unlawful (Point II). And the defendants were prejudiced in this free speech case when the trial court instructed the jury in the language of a parade permit ordinance when no permit was required for the peaceful First Amendment activity of the defendants (Point III).

ARGUMENT.

I.

WHERE DEMONSTRATORS ARE PEACEFUL, A CONVICTION OF DISORDERLY CONDUCT MUST BE REVERSED WHEN IT IS BASED ONLY ON THE REACTION OF THE SPECTATORS TO THE UNPOPULAR VIEWS OF THE DEMONSTRATORS.

The Heckler's Veto Conflicts With The First Amendment.

In this case the defendants were peacefully demonstrating in the public way on an issue of general public concern. Spectators who chose to appear began to heckle them, and while the conduct of the demonstrators remained orderly, and at police suggestion even turned silent, the spectators became threatening and violent. The police gave the demonstrators the election of ceasing their activity, or of being arrested, and when the demonstrators refused to stop, arrested them. Thus, the demonstration was terminated on the "heckler's veto", an apt term coined by Professor Harry Kalven, *The Negro and The First Amendment* (1965), pp. 140-160. The demonstrators were convicted of two counts of disorderly conduct and the conviction was affirmed. If the opinion stands, freedom of speech will be determined by the violence of those opposed to peaceful expression.

The demonstrators were charged and convicted of two separate charges of disorderly conduct under the Chicago Ordinance, Municipal Code, Section 193-1. As set out below in Point II, the ordinance is vague, restrains and proscribes protected First Amendment conduct, and with-

out standards allows discretion in the police to decide when such conduct becomes improper. But it is also vague as to just what conduct is prohibited. The provisions of the ordinance charged read:

> "All persons who shall make, aid, countenance, or assist in making any improper noise, riot, disturbance, breach of the peace, or diversion tending to a breach of the peace, within the limits of the city;"

and:

> "all persons who shall collect in bodies or crowds for unlawful purposes, or for any purpose, to the annoyance or disturbance of other persons . . . shall be deemed guilty of disorderly conduct."

The ordinance was apparently applied so as to charge the demonstrators, engaged in free speech, under the first provision with the responsibility of the threats and violence of the crowd, and under the second provision with causing the crowd to gather to the annoyance of some unnamed persons. (Complaint, R. 2, 803). On the record in this case these charges are in conflict with the First and Fourteenth Amendments of the Constitution, and with prior decisions of this Court.

A Demonstration In The Public Way.

First, the demonstrators were in the public way.

> "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and time out of mind have been used for the purposes of assembly, communicating thoughts between citizens and discussing public questions. Such use of the streets and public places has from ancient times been a part of the privileges, immunities, rights and liberties of citizens." *Hague* v. *CIO*, 307 U.S. 496, 515 (1939), Roberts, J.

This distinguishes *Adderley* v. *Florida,* 385 U.S. 39 (1966). It is not relevant that the demonstration ended up in a residential area as there was no "precise and narrowly drawn" ordinance prohibiting such activity in such areas, see Kamin, *Residential Picketing and the First Amendment,* 61 N.U.L. Rev. 177 (1966), and this Court has upheld demonstrations on private, company owned town property, *Marsh* v. *Alabama,* 326 U.S. 501 (1946), on private residential property under certain circumstances, *Martin* v. *Struthers,* 319 U.S. 141 (1943), and most recently, in the open area of a shopping center, *Amalgamated Food Employees* v. *Logan Valley Plaza, Inc.,* 88 S. Ct. 1601 (1968). In the Count below the City argued that the demonstrators "invaded" the neighborhood, and that the spectators were "a captive audience". If they invaded the community, they did so with police approval, in the company of the City prosecutor, and the spectators elected to stay and were not captives.

Peaceful Demonstrations On Public Issues—Annoyance.

Next, the conduct here involved a public issue and the demonstrators were peaceful.

> "We are here dealing with the aspect of a basic constitutional right—the right under the First and Fourteenth Amendments guaranteeing freedom of speech and of assembly, and freedom to petition the Government for redress of grievances. . . As this Court has repeatedly stated, these rights are not confined to verbal expression. They embrace appropriate types of action which certainly include the right in a peaceful and orderly manner to protest by silent and reproachful presence, in a place where the protestant has every right to be, the unconstitutional segregation of public facilities." *Brown* v. *Louisiana,*

> 383 U.S. 131 at 141-142 (1966) (Fortas, J., prevailing opinion)

See also *Edwards* v. *South Carolina,* 372 U.S. 229 (1963). And as such, their conduct was a form of protest, not disturbance, and protected, whether or not it was annoying. And it is clear that if the defendants annoyed anyone it was the spectators and then only because of their unpopular views. And this Court has followed *Edwards* in cases on even more difficult facts, *Henry* v. *City of Rock Hill,* 376 U.S. 776 (1964), and *Fields* v. *South Carolina,* 375 U.S. 44 (1963). In *Fields* mere presence of about 1,000 demonstrators favoring unpopular views on the race issue was held insufficient to support breach of the peace convictions, even though the result of the demonstration was to disrupt traffic. *State* v. *Brown,* 126 S.E. 2d 1, 3 (1962), and in *Henry* convictions for the same charges also based on protest of racial conditions were reversed even though the singing of the defendants caused disruption of work in the town's city hall, 241 S. Car. 427, 128 S.E. 2d 775 (1962). The Court reversed holding that as in *Edwards* and *Fields* (pp. 777-778):

> "they were convicted upon evidence which showed no more than that the opinions which they were peaceably expressing were sufficiently opposed to the views of the majority of the community to attract a crowd and necessitate police protection."

And in *Edwards,* (p. 237), the Court had concluded that "the Fourteenth Amendment does not permit a state to make criminal the peaceful expression of unpopular views." First Amendment freedoms include peaceful demonstration on public property, a form of expression, as "free political discussion," and see *Cox* v. *Louisiana,* 379 U.S. 536 (1965). Note also

> "The style of the protest, as I said, seems to me essentially the same in both cases [*Cox* and *Edwards*], and the style is worth noting. These are structured ceremonials of protest; they are not riots. The demonstrators were not, as the majority recited the record, trying to bring government to a halt; rather they were expressing the concern of the young Negro about his situation. What was symbolized was a deep grievance, a break with society. They prayed, they pledged allegiance to the flag, they sang "God Bless America," and—in *Cox*—they even stopped for a red traffic light. Whatever the power, pressure, and anxiety generated by such huge numbers, the demonstrations showed a tact, a grace, a patience, and a distinctive rhetoric of their own." Kalven, *The Concept of the Public Forum*, 1965 *The Supreme Court Review*, 1, 6.

Such demonstration, by definition, necessarily causes dispute. This is

> ". . . a function of free speech under our system of government . . . to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. This is why freedom of speech, though not absolute, (citation omitted), is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public convenience, annoyance or unrest (citations omitted). There is no room under our Constitution for a more restrictive view. For the alternative could

> lead to a standardization of ideas either by legislatures, courts, or dominant political or community groups." *Terminiello* v. *Chicago*, 337 U.S. 1, (1949) at 4-5.

The case is just the same as *Cox* v. *Louisiana,* 379 U.S. 536, *supra.* The protestors there were allowed to stay until the spectators became annoyed, then the protestors were ordered to cease their activity. The Court on its own independent examination of the record, concluded (at 545) that, in spite of the spectators' reaction, the record showed "no conduct which the state had a right to prohibit as a breach of the peace" holding that Louisiana had infringed upon the defendant's rights to free speech and free assembly. See also *Garner* v. *Louisiana,* 368 U.S. 157 (1961), Harlan, J. concurring; Kalven, *The Negro and the First Amendment,* pp. 129-132 (1965). Thus, the charge under the ordinance of annoying the spectators must fall.

Violence Of The Spectators, Unprovoked.

And it follows that this court has refused to uphold "the heckler's veto" in the First Amendment area. The Court has protected free speech and free assembly against inroads by crowd hostility, whether from the crowd itself or from the state and local officials who infringed upon the demonstrator's rights in the guise of protecting them from the crowd's hostility.

> "Participants in an orderly demonstration in a public place are not chargeable with the danger, unprovoked except by the fact of the constitutionally protected demonstration itself, that their critics might react with disorder or violence." *Brown* v. *Louisiana,* 383 U.S. 131, 133, n. 1 (1966) (Fortas, J., prevailing opinion)

And *Watson* v. *City of Memphis,* 373 U.S. 526, 535 (1963), quoted in *Cox* v. *Louisiana,* 379 U.S. 536, *supra,* 551, that "the compelling answer to this contention is that constitutional rights may not be denied simply because of the hostility to their assertion or exercise." See Kalven, *The Negro and The First Amendment* (1965), pp. 140-160. And in *Wright* v. *Georgia,* 373 U.S 284 (1963) the Court held (at 293) that "the possibility of disorder by others cannot justify exclusion of persons from a place if they otherwise have a constitutional right . . . to be present." Thus, the Illinois Supreme Court has misapprehended these cases (Opin., App. pp. 8a-12a).

And the defendants here are not guilty for refusing to leave because the police request was made only because of the illegal conduct of the spectators, as a means of cutting off the peaceful and protected conduct of the defendants, *Wright* v. *Georgia,* at p. 292, holding that there is no obligation to obey the order of a policeman which is itself unconstitutional, and see *City of Chicago* v. *Williams,* 45 Ill. App. 2d 327, 330-331, 195 N.E. 2d 425, 427 (1963), "there is no obligation to obey . . . a police order if it is arbitrary and unreasonable."

If either of the charges against the defendant stands, the heckler's veto would be proper in such instances as when spectators shouted down Secretary of State Dean Rusk, Secretary of Agriculture Orville Freeman, or Chancellor Kirk of Columbia University and will establish the rule that the police are the enforcers of the will of

the majority in the face of unpopular views. Note this danger:(**)

(**) February 2, 1968

CHICAGO SUN-TIMES
EDITORIAL PAGE

A PICTURE OF VIOLENCE

An investigation into the shameful activities that have been taking place outside the Mount Greenwood Elementary School, 10841 S. Homan, has been ordered by Deputy Police Supt. James Rochford. He took the action after viewing photographs taken by Duane Hall, Sun-Times photographer, which showed that police arrested two men who had been kicked and beaten by backlash picketers at the school. The police did not arrest the attackers.

We trust Rochford's investigation will cover not only the circumstances of this particular arrest but the general attitude of the policemen assigned to the school.

Since Monday, picketers organized by Operation Crescent, a suburban-based group opposed to school integration, have marched at the all-white Chicago school protesting the transfer to it of seven Negro pupils. The transfer is part of the school board's program to relieve overcrowded classes.

The Crescent marchers certainly have a right to picket just as pro-integration groups have, although it should be well noted that community organizations in the area have taken a stand *against* the Crescent demonstration. Its extremism is not supported by all parents of children in the Greenwood school.

We do not believe that the right to picket includes the disturbance of the peace by vocally harassing the Negro children as they arrive and leave the school. The police have not attempted to curb this disgraceful yelling at little children, which is reminiscent of scenes in Little Rock in 1957. Even Little Rock now accepts integration.

See Haiman, *The Rhetoric of the Streets, Some Legal and Ethical Considerations,* Quarterly Journal of Speech, Vol. LIII, No. 2, 1967(•), p. 112:

> "Thus a march which begins as a peaceful parade of 1,000 through the streets of Chicago soon turns into a potential race riot requiring the intervention of hundreds of policemen. But let us be clear, as so few people seem to be, about what has changed this peaceful parade into such a potentially dangerous activity that the mere threat to march is perceived as a coercive weapon. The change has been wrought *by the hostile audience* which, rather than contenting itself to stay at home and ignore the demonstrators, chooses to go out on the streets to confront them. There is nothing *inherently* coercive about one dis-

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(••—continued)

On Wednesday, two men, both 25, appeared at the school to counter-picket for school integration. The Crescent picketers slugged them and tore their picket signs. Photographer Hall recorded kicks and punches against the men, who did not fight back. One showed a policeman moving in to break up the action. Several times police moved in to separate the men from their assailants. Finally to end the fracas the police arrested the victims of the assaults. Why did they not at least also arrest the sluggers and restore order after the very first punch was thrown?

The transfer plan being protested by these un-American activities is official Board of Education policy. The Chicago Police Department has a responsibility not only to preserve order at schools without taking sides in a controversy but also to help school authorities carry out official city policy when they need police help. We hope Rochford's report will be a reminder of these responsibilities.

(•) Copies of this article, not commonly available in law libraries, will be submitted with this brief for the use of the Court.

> senter, or one hundred, or one thousand, walking peaceably down a street or gathering to sing in front of a building. Their activity is endowed with coercive potential only if others go forth to do battle with them, or feel too guilty and fearful to leave them alone." (Italics by the author)

The demonstrators never provoked the spectators (i.e., called them names, challenged them to fight, threw rocks, eggs or bottles) but the spectators did so, and the Illinois Supreme Court so found (Opin. App. 4a-7a) Distinguish *Feiner* v. *New York,* 340 U.S. 315 (1951), *Chaplinsky* v. *New Hampshire,* 315 U.S. 568 (1942), *Beauharnais* v. *Illinois,* 343 U.S. 250 (1952). But the Court below upheld the conviction merely because of the continued presence of the demonstrators (Opin., App. 15a), who were making their point in the face of the hostile crowd.

In *Amalgamated Food Employees* v. *Logan Valley Plaza,* 88 S. Ct. 1601, *supra,* this Court upheld protection of peaceful picketing. Would the decision change if the employees of the super-market, customers, or others using the center, had beseiged the peaceful pickets, hailed them with invective, epithets, eggs and rocks? Would this illegal conduct make the peaceful actions of the demonstrators illegal? It is absurd to say yes, but that is the basis of the decision below.

We have learned that we can sustain demonstrations in hostile or crowded places *Williams* v. *Wallace,* 240 F. Supp. 100 (1965), enjoining the Governor of the State of Alabama and other state and local officials from interferring with a proposed march by demonstrators from

Selma to Montgomery, Alabama, and from failing to provide adequate police protection to the demonstrators during the march.

> "The defendants' contention that there is some hostility to this march will not justify its denial [citations omitted]. Nor will the threat of violence constitute an excuse for its denial." (at p. 109)

And, see *Wolin* v. *Port Authority of New York,* 392 F. 2d 83, (2nd Cir., 1968), upholding the right to an orderly protest demonstration even in a crowded bus terminal, at p. 93.

> "We should in these times be mindful that to the extent we secure legitimate and orderly access to means of communication for all views, we create conditions in which there is no incentive to resort to more disruptive conduct."

And this is what occurred here. The defendants followed police instruction in their route. Distinguish *People* v. *Levner,* 30 N.Y.S. 2d 487, 492 (1941), and *United States* v. *Woodard,* 376 F. 2d 136 (7th Cir., 1967)(*), *People* v. *Turner,* 265 N.Y.S. 2d 841 (1965), (*sub nom. Turner* v. *New York,* 386 U.S. 773, (1967), writ of certiorari dismissed as improvidently granted).

Finally, the fact that the police did enforce the heckler's veto is also clearly established as the record shows no arrest of a single demonstrator, even though the police observed individuals shout curses, and even though the

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(*) See Cummings, J., p. 146, concurring, who would have reversed a conviction under the ordinance on the facts of the present case, and would have held the ordinance unconstitutional as applied.

police physically threw individual spectators back into the crowd.(**) (R. 7a)

The decision of the Court below upholding the heckler's veto has been codified by the City of Chicago into its new disorderly conduct ordinance,

> "A person commits disorderly conduct when he knowingly: * * *
>
> Refuses or fails to cease and desist any peaceful conduct or activity likely to produce a breach of peace where there is an imminent threat of violence, and where the police have made all reasonable efforts to protect the otherwise peaceful conduct and activity, and have requested that said conduct and activity be stopped and explained the request if there be time;
>
> Section 193-1 of the Municipal Code of the City of Chicago, as amended, Journal of the Proceedings of the City Council of the City of Chicago, Illinois, Tuesday, March 26, 1968, pp. 2561-62."

If the opinion is allowed to stand the heckler's veto will prevail.

II.

THE CHICAGO DISORDERLY CONDUCT ORDINANCE IS UNCONSTITUTIONALLY OVERBROAD AND VAGUE AND SHOULD BE STRUCK DOWN.

The Decision Below Conflicts With Decisions Of This Court And Of Other Courts.

This Court has already reversed a conviction under the Chicago ordinance on vagueness grounds, *Terminiello* v. *Chicago,* 337 U.S. 1 at 6 (1949), but the Illinois courts

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(**) It is public knowledge that subsequent to the arrests in this case the Chicago Police Department sometimes changed its tactics, and were effective in crowd control by arresting the hecklers.

have continued to convict under the ordinance. This court has invalidated similar ordinances because of vagueness and overbreadth. *Cox* v. *Louisiana,* 379 U.S. 536 at 552 (1965); *Edwards* v. *South Carolina,* 372 U.S. 229 at 238 (1963); *Wright* v. *Georgia,* 373 U.S. 284 at 293 (1963); see *Brown* v. *Louisiana,* 383 U.S. 131 at 144 (1966), Brennan, J., concurring. The Federal District Court for the Northern District of Illinois, Eastern Division, recently found the Chicago ordinance void for vagueness and overbreadth. (The City is appealing that decision). *Landry* v. *Daley,* 280 F. Supp. 968 (N.D. Ill. E.D., 1968).

> "This ordinance [Section 193-1] has to be one of the most charming grab-bags of criminal prohibitions ever assembled. Some of its provisions are nostalgic though obviously obsolete. Jugglers or touts, ropers, steerers or cappers for gambling houses are today as rare as buggy whips. Obsolescence, however, does not connote unconstitutionality.
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> "Others of the provisions are clearly of current concern. Prohibition against engaging in any fraudulent scheme, device or trick to obtain money or other valuable thing or the obtaining of money or other valuable things by trick or fraud is certainly a proper exercise of the city's police power though it is not generally considered "disorderly conduct." Similarly, the city has a legitimate concern and duty to preserve the peace from forceful or violent breaches thereof whether by individuals or mobs.
>
> "It is equally obvious that other portions of the ordinance are both vague, indefinite and overbroad and therefore unconstitutional. Unfortunately, they are so inextricably intertwined with the valid segments that it is impossible to sever them and thereby preserve the latter.

"For example, the opening language, "All persons who shall make, aid, countenance, or assist in making any improper noise, riot, disturbance, breach of the peace or diversion tending to a breach of the peace" contains prohibitions which are clearly vague and indefinite, as well as overbroad. What is an "improper noise?" The dictionary defines "improper" in part as "not in accordance with fact, truth or right procedure," and "not in accordance with propriety, modesty, good taste or good manners."(1) The definition of "noise" includes "loud, confused or senseless shouting," "sound or a sound that lacks agreeable musical quality or is noticeably loud, harsh or discordant," "any sound that is undesired or that interferes with something to which one is listening," or even alternatively "sound or a sound that is not regarded as unpleasing or that has a pleasing melodious quality" as, for example, "the noise of heavenly choirs."(1)

"The number of sounds which are constitutionally permitted and protected and which would fall within the proscription of "improper noise" is infinite. Political campaigns, athletic events, public meetings and a host of other activities produce loud, confused or senseless shouting not in accord with fact, truth or right procedure to say nothing of not in accord with propriety, modesty, good taste or good manners. The happy cacophony of democracy would be stilled if all "improper noises" in the normal meaning of the term were suppressed.

"The Supreme Court has held on several occasions that statutes or ordinances prohibiting "noise" are valid only to the extent that they are necessary to

(1) Webster, New International Dictionary (3d ed. 1961, Unabridged) p. 1137.

(1) Webster, New International Dictionary (3d ed. 1961, Unabridged) p. 1533.

the protection of other important public interests, e.g., the prohibition of horn blowing or other noise in a hospital zone. Prohibition of "noise" per se is unconstitutional.[2] And the addition of the vague and indefinite adjective "improper" does not cure the defect.

"Not only is making, aiding or assisting in the making of an improper noise a crime, but it is likewise a crime to "countenance" the making of such a noise by a third party. The literal language would apparently create a duty on all persons in the vicinity of one making an improper noise at least to attempt to effect a termination thereof. If the citizenry took this duty seriously, it staggers the imagination to contemplate the result. There would be more action in the stands than on the field at any athletic event as spectators sought to protect themselves from violating the law against countenancing the improper noises being made by others about them.

"Also proscribed is making, aiding, countenancing or assisting in the making of a "disturbance" which Webster defines in part as "an interruption of a state of peace or quiet," or "an interference with a planned, ordered or regular procedure, state or habit."[1] Again, this is both too vague and indefinite as well as overbroad. The legitimate exercise of free-

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[2] *See Edwards* v. *South Carolina,* 372 U.S. 229, 233 (1963). *See, also, Cox* v. *Louisiana,* 379 U.S. 536, 546-50 (1965). In *Cox,* the Louisiana Supreme Court defined the term "breach of peace" as "to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet. *Id.* at 551. The Supreme Court of the United States held the statute unconstitutional, as construed by the Louisiana Court, on the grounds that its broad scope intruded on the constitutionally protected rights of free speech and assembly. *Id.* at 552.

[1] Webster, New International Dictionary, (3d ed. 1961, Unabridged, p. 661).

dom of speech, press or expression frequently interrupts a state of peace or quiet or interferes with a planned, ordered or regular procedure, state or habit. New ideas more often than not create disturbances, yet the very purpose of the First Amendment is to stimulate the creation and dissemination of new concepts. The prohibition against making or countenancing a disturbance would literally make it a crime to deliver an unpopular speech which results in a "disturbance" or to stand by while someone else makes such a speech. This is clearly an invalid restriction of protected rights. 280 F. 2d 968, at 969-970.

* * * * *

"While a casual reading of the ordinance will reveal many other provisions with similar defects, the foregoing should be sufficient to demonstrate that the so-called "Disorderly Conduct" ordinance is both vague and indefinite as well as overbroad and therefore unconstitutional." 280 F. 2d 968, at 972.

Following the *Landry* decision, however, the language of the Illinois Supreme Court in the opinion in the present case was codified by the City of Chicago into a new disorderly conduct ordinance.(*) Thus, the holding of the Illinois Court has become judicial precedent for legislation, and both the opinion and the ordinance honor and further vagueness, overbreadth, and the heckler's veto.

Vagueness, Overbreadth, And Lack Of Standards.

Defendants may raise the vagueness and overbreadth of the ordinance because their conduct is not "hardcore

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(*) The language of the new ordinance is set out above, Point I, p. 20.

disorderly", cf. *Brown* v. *Louisiana,* 383 U.S. 131, 149 (1966), Brennan concurring; d. *United States* v. *Woodard,* 376 F. 2d 136 (7th Cir. 1967); *City* v. *Hunt,* 374 Ill. 234, 29 N.E. 2d 86 (1940).

The ordinance lacks standards: defendants had no notice that their conduct was prohibited:

> "There is an equally plain requirement for laws and regulations to be drawn so as to give citizens fair warning as to what is illegal; for regulation of conduct that involves freedom of speech and assembly not to be broad in scope as to stifle First Amendment freedoms, which "need breathing space to survive", *NAACP* v. *Button,* 371 U.S. 415, 433; for appropriate limitations on the discretion of public officials where speech and assembly are intertwined with regulated conduct; and for all such laws and regulations to be applied with an equal hand. We believe that all of these requirements can be met in an ordered society dedicated to liberty. We reaffirm our conviction that "[f]reedom and viable government are . . . indivisible concepts." *Cox* v. *Louisiana,* 379 U.S. 536, at 574-575 (1965)

cf. *Wright* v. *Georgia,* 373 U.S. 284, 293 (1963).

Discretion In The Police—Lack Of Standards.

The police had unlimited discretion to decide when defendants' conduct became disorderly, and did so when defendants' demonstration had become totally silent and the spectators were yelling and throwing rocks.

> "In the case before us Louisiana has by a broad, vague statute given policemen an unlimited power to order people off the streets, not to enforce a specific, nondiscriminatory state statute forbidding patrolling and picketing, but rather whenever a policeman makes a decision on his own personal judgment

that views being expressed on the street are provoking or might provoke a breach of the peace. Such a statute does not provide for government by clearly defined laws, but rather for government by the moment-to-moment opinions of a policeman on his beat. . . . This kind of statute provides a perfect device to arrest people whose views do not suit the policeman or his superiors, while leaving free to talk anyone with whose views the police agree. Cf *Cox* v. *Louisiana,* 379 U.S. 536, at 579," Black, J., concurring.

Protected Conduct Proscribed.

The ordinance sweeps within its broad provisions conduct which is protected by the first amendment.

NAACP v. *Button,* 371 U.S. 415 (1963), 433:

". . . [First] amendment freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions (citations omitted). Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity (citations omitted)."

Police action under the ordinance deterred other protesters in company with defendants from continuing their demonstration (Three persons ceased demonstrating and withdrew from the area when told by the police that their peaceful, silent demonstration was disorderly.), and ultimately was used to terminate defendants' protest, and to arrest and place them in custody.

The Chicago ordinance is classic vagueness and overbreadth. This court so held in *Terminiello, supra,* and relied on that decision to strike down other disorderly conduct ordinances. Yet, the Chicago ordinance continues,

and was used to stop defendants' protected First Amendment conduct and to convict them. This Court should declare the invalidity of the ordinance once and for all, vindicate petitioners' First Amendment rights, and reverse the decision below.

III.

THE DEFENDANTS WERE PREJUDICED BY AN INSTRUCTION ON A PARADE PERMIT ORDINANCE—WHERE THE CITY PROSECUTOR ARGUED THE POINT TO THE JURY—WHEN NO PERMIT WAS REQUIRED AND NO VIOLATION OF THE PARADE ORDINANCE CHARGED.

The opinion below is in direct conflict with the opinion of this Court in *Cox* v. *Louisiana,* 379 U.S. 536 (1964), at 556, fn.:

> "Although cited by neither party, research has disclosed the existence of a local ordinance of Baton Rouge, Baton Rouge City Code, Tit. 11, §210 (1957), which prohibits 'parade[s] . . . along any street except in accordance with a permit issued by the chief of police. . . .' A similar ordinance was in existence in *Fields* v. *South Carolina, supra.* As in *Fields,* this ordinance is irrelevant to the conviction in this case as not only was appellant not charged with its violation but the existence of the ordinance was never referred to by the State in any of the courts involved in this case, including this one, and neither the Louisiana trial court nor the Supreme Court relied on the ordinance in sustaining appellant's convictions under the three statutes here involved. Moreover, since the ordinance apparently sets forth no standards for the determination of the Chief of Police as to which parades to permit or which to prohibit, obvious constitutional problems would arise if appellant had been convicted for

parading in violation of it. See the discussion in text above; *Lovell* v. *Griffin, supra,* at 452-453; *Hague* v. *CIO, supra,* at 518; *Saia* v. *New York, supra,* at 559-560."

The Court below ignored the purpose, and also the effect of an instruction by a judge on a jury, and held (Opn., App. 16a):

> "It is also argued that the magistrate committed reversible error by instructing the jury that there was an ordinance requiring a permit for a parade or open air public meeting. A reading of the instructions as a whole convinces us that this instruction would not mislead the jury or prejudice the defendants. The instructions clearly state that defendants were charged with disorderly conduct and the forms of verdict dealt only with disorderly conduct."

Yet the instruction, given over objection (R. 751), read (R. 796-797):

> "The jury is instructed that on August 2nd, 1965, there was in full force and effect a Municipal Ordinance of the City of Chicago, Section 36-1 which states as follows: 'No parade shall be allowed on any public way, nor shall any open air public meeting be held in or upon any public way, until a permit in writing therefor shall be first obtained from the Department of Streets and Sanitation. . .' "

and in closing argument, the prosecutor (R. 759) noted that "The defense stipulated there was no parade permit and no application for a parade permit.", (R. 764) "There was no parade permit.", (R. 781) "We know by stipulation there was no permit to parade" and "we do know that they did not have a permit to parade.", (R. 784)

"There is another ordinance . . . if you are going to parade, you have to have a parade permit" and there is also another ordinance in the City of Chicago, written many years ago, again not August 1st, August 2nd, or sometime after the act occurred. That is, that if you are going to parade, you have to have a parade permit.

"What is the purpose of that? We are not saying that you cannot parade. We are saying that, tell us where you are parading, we can afford police protection. Tell us where you are parading. We can block off the street. You have seen The American Legion, V.F.W., the Shriners, you have seen them parade with permits, but you see the streets blocked off. The City doesn't have mental telepathy in order to say, 'Gee, I think there is going to be a parade in The Bridgeport Area. Maybe we ought to get some police protection out there, and block off the streets.'"

"The testimony is that no permit was taken."

It was clearly the purpose of the City to impress the jury that there was some wrongdoing in being without a permit, and the trial court was willing to let this prejudice occur.

Thus, the defendants were prejudiced by the instruction in their trial on free speech questions.

CONCLUSION.

Defendants were convicted under an ordinance that is unconstitutional, charged with annoyance by their mere presence, with violence they did not provoke, and burdened with a baseless instruction that made the jury believe

that they had violated some legal obligation. This Court should note the prejudice by the instruction, but should reverse outright and hold that the defendants, in the exercise of free speech, cannot be charged with the violence and disorder of their hecklers, and that the Chicago disorderly conduct ordinance is void for vagueness and unenforceable.

Respectfully submitted,

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SUPREME COURT, U. S.

SEP 16 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 60

DICK GREGORY, ET AL., *Petitioners,*

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION, *Respondent.*

BRIEF FOR THE RESPONDENT.

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THE BLAKELY PRINTING COMPANY, CHICAGO 56

INDEX.

	PAGE
Questions Presented	1
Statement	2
Summary of Argument	6
Argument:	
I. When there is an imminent threat of violence and the police have done everything possible to protect the demonstrators and control the crowd, the police are justified in arresting those demonstrators who have twice refused to disperse and have declared their intention to continue to march	9
A. Civil liberties such as free speech presuppose an orderly society	10
B. The nature of the forum chosen limits the constitutional protection accorded a demonstration	12
C. A clear and present danger of violence requires that a demonstration cease	22
D. Police made every effort to protect the marchers and control the crowd. At the point of riot, when some marchers refused to leave and declared their intention to continue to march, there was no alternative but arrest	26
II. Chicago's disorderly conduct ordinance as interpreted by the Illinois Supreme Court is constitutional	28
III. There was no error in instructing the jury as to the existence of an ordinance when that instruction clarified testimony in the record and was not misleading considering the charge as a whole	33
Conclusion	35

CITATIONS.

Cases.

Adderley v. Florida, 385 U. S. 39, 47-48 (1966) 12, 19
Amalgamated Food Employees Union v. Logan Valley Plaza, ... U. S. ....., 88 S. Ct. 1601, 1609-1611 (1968) 14, 15
Breard v. Alexandria, 341 U. S. 622, 644 (1951) 13
Cantwell v. Connecticut, 310 U. S. 296, 308 (1940) 11
Chicago v. Gregory, 39 Ill. 2d 47, 60, 233 N. E. 2d 422 (1968) 5, 7
Chicago v. Hunt, 374 Ill. 234, 236, 29 N. E. 2d 86 (1940) 31
Chicago v. Joyce, 38 Ill. 2d 368, 232 N. E. 2d 289 (1967) 29
Cox v. Louisiana, 379 U. S. 536, 554-556 (1965) 10, 11, 12, 19, 23, 31, 33
Dennis v. United States, 341 U. S. 494, 508 (1951).... 7
Dickerson v. Baltimore & O. C. T. R., 73 Ill. App. 2d 5, 220 N. E. 2d 43 (1966)..... 35
Edwards v. South Carolina, 372 U. S. 229 (1963) 13, 15, 23, 31, 32
Feiner v. New York, 340 U. S. 315, 319 (1951)..... 7, 22
Garner v. Louisiana, 368 U. S. 157 (1961)..... 23, 24
Henry v. City of Rock Hill, 376 U. S. 776 (1963)..... 23
Kosowski v. McDonald Elevator Co., 33 Ill. App. 2d 386, 179 N. E. 2d 469 (1962) 35
Landry v. Daley, 280 F. Supp. 968 (N. D. Ill. 1968)... 29
Marsh v. Alabama, 326 U. S. 501 (1946)..... 14, 15
Niemotko v. Maryland, 340 U. S. 273, 288, 289 (1951). 22, 27
State v. Cooper, 205 Minn. 333, 285 N. W. 903 (1939).. 20

State v. Edwards, 239 S. C. 339, 123 S. E. 2d 247 (1961) 32
State v. Perry, 196 Minn. 481, 265 N. W. 302 (1936).. 20
State v. Zanker, 179 Minn. 355, 356, 229 N. W. 311 (1930) 19
Terminiello v. Chicago, 337 U. S. 1 (1949)..... 31
United States v. Petrillo, 332 U. S. 1, 7 (1947)..... 30
Winters v. New York, 333 U. S. 507, 514-515 (1947).7, 28, 30
Wolin v. Port of New York Authority, 392 F. 2d 83, 88 (2d Cir. 1968)..... 15
Wright v. Georgia, 373 U. S. 284 (1963).....31, 32

Statute.

Ill. Rev. Stat. 1965, ch. 122 § 34-13..... 17

Miscellaneous.

Fortas, Concerning Dissent and Civil Disobedience, p. 3 9
Kamin, Residential Picketing and the First Amendment, 61 N. U. L. Rev. 177, 228-231 (1966).....17, 20

IN THE

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OCTOBER TERM, 1968.

No. 60.

DICK GREGORY, ET AL.,

Petitioners,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION,

Respondent.

BRIEF FOR THE RESPONDENT.

QUESTIONS PRESENTED FOR REVIEW.

---

1. Whether the police are justified in arresting those demonstrators who have refused to disperse and have declared their intention to continue to march when, in spite of the fact that the police have protected them for over five hours of demonstration, a threat of riot becomes imminent.
2. Whether the city of Chicago's disorderly conduct ordinance as interpreted by the Illinois Supreme Court is constitutional.
3. Whether there was error in instructing the jury of the existence of a parade ordinance when the ordinance was relevant to the proof of the city's case.

STATEMENT OF THE CASE.

On August 2, 1965, the defendant, Dick Gregory, assembled a group of eighty-five persons at Buckingham Fountain in Grant Park, downtown Chicago at 4:30 in the afternoon (R. 603). The group intended to march to City Hall, then to the home of Mayor Daley to demand that the Mayor "fire" Superintendent of Schools Benjamin Willis. The defendant Gregory addressed the marchers, telling them that they would march first to the "snakepit" [city hall] then to the "snake's house" [Mayor Daley's home] and that he expected the marchers to get arrested (R. 105-106).

After a brief demonstration in front of City Hall, the group led by Gregory marched approximately five miles to the Mayor's home (R. 106, 604). A police "task force," a city attorney and Mrs. Jean Williams, attorney for the defendants at trial, accompanied the marchers (R. 605, 612). A "task force" is an elite police unit, specially trained to handle crowds and give extra police protection. This unit was assigned specifically to protect the marchers. Gregory again spoke to the group instructing them how to behave and said he anticipated that there would be arrests (R. 612-13).

They reached the block where the Mayor's home is located about 7:50 P. M. About 25 local residents watched as the group approached (R. 107, 129, 539). Some of the local residents held signs which said, "We love our Mayor" (R. 129, 621). The area was well policed; approximately 100 officers circled the block (R. 121). Wooden barricades were placed to prevent the onlookers from approaching too closely (R. 539, 617). In addition, the taverns in the neigh-

borhood had been closed at the request of the police (R. 112).

Rather than marching in front of the Mayor's house, the group began to march around the block bounded by 35th and 36th Streets and Lowe and Union Avenues. They carried signs, chanted and sang songs characterizing Mayor Daley as a "snake" and his home as a "snake pit." The noise was so loud it could be heard all around the block (R. 267). During the period from their arrival in the area at 7:50 P. M. until 8:30 P. M. they marched around the block four times singing and chanting (R. 132, 269). On the first trip around the block some youngsters tried to fall in with the marchers. The police asked them to leave and they did (R. 107, 134).

As the marchers continued to circle the block the crowd steadily grew. At 8:30 P. M. there were approximately 500 to 600 people in the area (R. 108, 269). The police tried to keep them apart (R. 269). The number of spectators continued to increase after 8:30 P. M., though the heaviest buildup was after 9:00 P. M. (R. 300). By 9:15 P. M. the police were unable to handle the crowd (R. 300). A television camera was set up on 36th Street which flooded the intersection with lights and attracted more people into the area (R. 495, 116). The crowd of spectators broke through the police lines and out into the streets (R. 116).

By the time the marchers stopped singing, though continuing to circle the block, the onlookers had begun singing, chanting and throwing eggs and rocks at the marchers (R. 108, 137, 292, 112). Whenever the spectators attempted to cross the street they were ordered back by the police (R. 159, 284). The police also ordered the spectators to stop shouting and yelling (R. 160). Some of the police circled the block with the marchers to protect them from the crowd. The police tried to apprehend those in the crowd who were

throwing things at the marchers (R. 553). It was impossible to see who was doing this because the rocks and eggs were thrown overhead from the rear of the crowd (R. 117, 298).

On the fourth time around the block, the marchers, without warning to the police, crossed 36th Street and began marching toward 37th Street. The defendant Gregory explained that the spectators had formed their own line of march ahead of Gregory's group and when the spectators turned down 36th Street he led his group toward 37th Street "So it won't look like we are following them . . ." (R. 633). The police, taken by surprise at the marchers' change of route, ran to keep up with them (R. 548). As the marchers crossed 36th Street, they walked directly into a large group of spectators (R. 108-109). The marchers had to wait while the police cleared a path for them (R. 549, 632, 635). On the corner of 37th and Lowe the march was again impeded when the marchers encountered a group of people on the sidewalk who were attending a funeral (R. 634).

After circling the block between 36th and 37th Streets the marchers headed back toward 36th Street and circled that block twice more. There were more than 1,000 people in the area (R. 115, 108, 162-63, 194, 277). The crowd was extremely agitated and was shouting "Let's get them" (R. 277). The police commander ordered the additional available officers into the area (R. 301). Shortly after 9:00 P. M. Commander Pierson spoke to Gregory. He explained that the hour was late, the situation was becoming increasingly dangerous and that when the marchers turned east on 35th Street they should cooperate to prevent a disorder by marching out of the area (R. 551, 114). Gregory refused (R. 551, 407). The marchers circled the block once more (R. 552).

When they reached 35th Street again Commander Pierson approached Gregory. He asked him to lead the marchers out of the area because of the near riot conditions (R. 552). It was aproximately 9:25 P. M. Twelve to fourteen hundred people were congregated on 35th Street between Union and Lowe. Almost all available police were concentrated on that street (R. 553-54). Gregory said that they would not leave (R. 552, 638).

Gregory said, "I walked back to the back of the line and explained to each of the marchers the conversation that had gone on ahead with Commander Pierson and myself. I explained to them that we were within our Constitutional rights and that if anything was said or if anything happened for no one to worry because we would decide up front what course of action would be taken, regardless of anything that happened. This was passed on, and I told each and every one of them personally, 'don't worry about anything, don't break the line.' and I came back up front and we continued to march. . ." (R. 641). Gregory ordered the marchers explicitly, "We are not going to leave. We will remain here. Let them arrest us" (R. 118, 407).

Commander Pierson told the marchers that if any of them wanted to leave they would be escorted out of the area. Three or four persons left (R. 553).

After repeated requests for the marchers to leave, Commander Pierson ordered their arrest (R. 568-569). The marchers, both black and white, were arrested (R. 659-660). They were charged with two counts of disorderly conduct and tried and convicted by a jury (R. 802-806). The Supreme Court of Illinois affirmed the trial court judgment. *Chicago* v. *Gregory,* 39 Ill. 2d 47, 233 N. E. 2d 422 (1968).

SUMMARY OF ARGUMENT.

I.

Petitioners' freedoms of speech and assembly were not restrained by respondent. To the contrary, the Chicago Police Department fully protected petitioners' demonstration, despite (1) the unpopularity of petitioners' cause, (2) their egregious and inappropriate choice of forum to present that cause, (3) the dubious societal value of their "ideas" and (4) the disturbance caused by petitioners to the tranquility of the residents of Mayor Daley's neighborhood. Petitioners' attorney referred to this police action as "protecting the demonstrators" (R. 128). Indeed, the record shows that the police marched with petitioners for five and one-half hours in order to make certain that there was absolutely no interference with their constitutional freedoms—and that for one and one-half hours at the terminus and object of their march, the home and neighborhood of Mayor Richard J. Daley, petitioners were able to express their "ideas", directly and symbolically, by singing, chanting, clapping, stomping, and by the carrying of signs reading "Snake Daley", "Snake's house", etc.

Petitioners' proposition that this demonstration was terminated because of a so-called "heckler's veto" adds more rhetoric than light to the issues herein. "Nothing is more certain in modern society than the principle that there are no absolutes, that a name, a phase, a standard has meaning only when associated with the considerations which gave birth to the nomenclature. See Douds, 339 U. S. at 397, 94 L. Ed. 942, 70 S. Ct. 674. To those who

would paralyze our Government in the face of impending threat by encasing it in a semantic straightjacket we must reply that all concepts are relative." *Dennis* v. *United States,* 341 U. S. 494 (1951), at 508.

Freedom of speech and assembly are not absolute rights. Both may be limited in a reasonable manner when clear and present danger of disorder becomes an immediate threat. Petitioners were arrested only after: (1) The peace and privacy of the neighborhood residents were completely disrupted by petitioners' raucous behavior and the possibility of violence and riot became a virtual certainty; (2) The police had made all reasonable efforts to control the ever-increasing crowd of spectators; (3) The police on several occasions had informed petitioners of the dangerous conditions and had asked them to cooperate by leaving the area. "[T]he officers in making the arrest were motivated solely by a proper concern for the preservation of order and protection of the general welfare, and . . . there was no evidence . . . that the acts of the police were a cover for the suppression of petitioner's views and opinions." *Feiner* v. *New York,* 340 U. S. (1951), at 319.

II.

The disorderly conduct ordinance of the City of Chicago has been narrowly interpreted in a series of cases before the Illinois Supreme Court in a manner which removes any doubt as to its constitutionality. That court held that in the instant cause all of the necessary elements of disorderly conduct were present and for that reason affirmed the trial court judgment. *Chicago* v. *Gregory,* 39 Ill. 2d 47, 60, 233 N. E. 2d 422 (1968). This Court has held that the construction placed on a statute by the highest State court will be binding on this Court. *Winters* v. *New York,* 333 U. S. 507 (1947).

III.

The jury instruction as to the existence of an ordinance requiring a parade permit was not misleading and was necessary to clarify references to a parade permit both in the testimony and in the remarks of petitioners' counsel. Moreover, the Illinois Supreme Court, after carefully examining the record, determined that the instruction was not prejudicial.

ARGUMENT.

I.

WHEN THERE IS AN IMMINENT THREAT OF VIOLENCE AND THE POLICE HAVE DONE EVERYTHING POSSIBLE TO PROTECT THE DEMONSTRATORS AND CONTROL THE CROWD, THE POLICE ARE JUSTIFIED IN ARRESTING THOSE DEMONSTRATORS WHO HAVE TWICE REFUSED TO DISPERSE AND HAVE DECLARED THEIR INTENTION TO CONTINUE TO MARCH.

The petitioners rest their argument on the proposition that if the conduct of demonstrators is not violent, their demonstration is, as a matter of law, constitutionally protected. This proposition is both overly simplified and wholly inaccurate. The conduct of the participants in a demonstration is only one of many factors which weighed together determine constitutional protection. Other factors which must be assessed are (1) the precise form of the demonstrators' conduct; (2) the type of forum chosen to air their views; (3) the availability of alternative forums; (4) the resulting infringement of the constitutional rights of others and, (5) above all else, the possibility of violence which degenerates and ultimately destroys the subject society. In connection with this last factor, the availability of police to maintain order and protect the exercise of constitutional freedoms is crucial. Notable for its absence from the list of relevant considerations is any evaluation of the merit of the demonstrator's message.

"Speech, including symbolic speech such as picketing, never exists in limbo. It always occurs in a particular place and in particular circumstances. Even if *what is said* does not create a 'clear and present danger' of physical injury to others, the place where the speech is uttered, the size of the crowd, and the circumstances may convert

the lawful into the unlawful". Mr. Justice Fortas, Concerning Dissent and Civil Disobedience, at 13.

A. Civil Liberties Such as Free Speech Presuppose an Orderly Society.

From the long line of First Amendment cases before this Court, certain principles of law have clearly emerged. Picketing, demonstrating and marching, though forms of action or conduct, are accorded some degree of First Amendment protection because they are mingled with speech. Because of the states' interest in regulating conduct in order to stabilize society and because they are not pure forms of speech, such activities are not accorded the full panoply of First Amendment protection. This Court stated the principle in *Cox* v. *Louisiana,* 379 U. S. 536 (1965), at 555:

> "We emphatically reject the notion urged by appellant that the First and Fourteenth Amendments afford the same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching, and picketing on streets and highways, as these Amendments afford to those who communicate ideas by pure speech. See the discussion and cases cited in No. 49, post at 563. We reaffirm the statement of the Court in *Geboney* v. *Empire Storage and Ice Co.,* 336 U. S. 490, at 502, that it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced or carried out by means of language either spoken, written or printed."

The exercise of any civil liberty presupposes the existence of an ordered society. Thus, activities protected by the First Amendment are not merely balanced off against the necessity of maintaining an ordered and stable society. The need to preserve an ordered forum for the expression and acceptance of ideas must preponderate over the exer-

cise of First Amendment liberties in isolated instances. Again in *Cox* v. *Louisiana,* 379 U. S. 536 (1965), this Court indicated the precedence which must be given to maintaining order:

> "From these decisions certain clear principles emerge. The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time. The constitutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy." (*Id.* at 554.)

In the present case, as a direct result of petitioners' conduct, the tranquillity and order of a residential community were disrupted. The situation was only moments removed from a riot. Yet the petitioners contend that their actions were constitutionally immune from any police effort to lessen the dangerous tensions of the situation. They claim the right to continue, unhampered, the same course of action which had created the near riotous conditions. Their claim of constitutional protection is predicated upon a refusal to recognize the cause and effect relationship between their march and the impending riot of a crowd numbering more than one thousand.

The words of this Court in *Cantwell* v. *Connecticut,* 310 U. S. 296 (1940) are appropriate here:

> "The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and

present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace or order, appears, the power of the State to prevent or punish is obvious." (*Id.* at 308.)

No group can demand that society pay such a price in violence and disorder so that members of that group may have unfettered liberty to speak their views when and where they choose.

B. The Nature of the Forum Chosen Limits the Constitutional Protection Accorded a Demonstration.

This Court has always recognized the significance of the site of a demonstration in determining constitutional protection. In *Cox* v. *Louisiana,* 379 U. S. 536 (1965), this Court indicated that a State's vital interest in preserving the integrity of its judicial system made demonstrations or protests outside of a courthouse building wholly inappropriate. Regardless of how symbolic that building may be or how effectively or poignantly a point could be made by demonstrating there, a courthouse is unacceptable as the site of a protest demonstration.

Likewise, in *Adderley* v. *Florida,* 385 U. S. 39 (1966), this Court affirmed a conviction for trespass resulting from a demonstration at the county jail. Certainly that property belonged to the State and was in that sense public property, but the use to which it was committed made it wholly inappropriate as the site of a demonstration. The Court affirmed the right of a State to deny access to public property for demonstrations:

"The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated. For this reason there is no merit to the petitioners' argument that they had a constitutional right to stay on the

> property, over the jail custodian's objections, because this 'area chosen for the peaceful civil rights demonstration was not only 'reasonable' but also particularly appropriate . . . ' Such an argument has as its major unarticulated premise the assumption that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please. That concept of constitutional law was vigorously and forthrightly rejected in two of the cases petitioners rely on *Cox* v. *Louisiana*, supra, at 554-555 and 563-564. We reject it again. The United States Constitution does not forbid a State to control the use of its own property for its own lawful nondiscriminatory purpose." (*Id.* at 47-48.)

In other decisions, this Court has commended the choice of a particular place for a demonstration. In *Edwards* v. *South Carolina*, 372 U. S. 229 (1962), demonstrators marched to the State House grounds to protest discrimination. The Court noted that because this was the seat of government it was an appropriate place to seek redress of grievances against the State. In addition, the grounds were open to the public and citizens from all over the State continually visited there, whether to lodge a complaint or just observe the processes of government.

It is not merely whether land is publicly owned or privately owned that determines whether it is a permissible place for a demonstration. Rather, the test is whether the use to which the property is commonly put or lawfully restricted is consistent with conducting a demonstration there. There are public sidewalks and streets surrounding all types of property, public and private, accessible and restricted. It does not follow that those streets and sidewalks are automatically available to groups who wish to march or demonstrate regardless of the character of the property they surround.

In *Breard* v. *Alexandria*, 341 U. S. 622 (1951), this Court

upheld the homeowner's right of privacy. In that case magazine solicitors went from door to door in a residential area trying to interest the residents in their publication. The solicitors claimed First Amendment protection because literature was involved. This Court viewed the problem as ". . . a balancing of the conveniences between some householders' desire for privacy and the publisher's right to distribute publications in the precise way that those soliciting for him think brings the best results." (*Id.* at 644.) This Court upheld the validity of an ordinance forbidding such invasions of the homeowners' privacy.

In *Marsh* v. *Alabama,* 326 U. S. 501 (1946), it was undisputed that the entire town was privately owned. However, this Court reversed a trespass conviction which resulted when a Jehovah's Witness attempted to distribute religious literature on a street adjoining a business block of the town. The streets of that town in the business area were frequented by the public generally and not restricted to residents of the town. A public highway ran thirty feet parallel to the business block bringing travellers from other towns to shop there. It would have been inconsistent to exclude any one group from those streets because all persons, regardless of whether they lived there were invited to come and shop there.

To the same effect is the recent decision in *Amalgamated Food Employees Union* v. *Logan Valley Plaza,* ..... U. S. ....., 88 S. Ct. 1601 (1968). In that case the petitioners had been enjoined by the Pennsylvania Courts from picketing in front of a supermarket in a shopping center. This Court held that the mere fact that respondents held title to the property did not justify excluding the pickets from an area normally accessible to the public.

> "All we decide here is that because the shopping center serves as the community business block 'and is freely accessible and open to the people in the area

> and those passing through,' *Marsh* v. *Alabama*, 326 U. S. at 508, 66 S. Ct. at 279, the State may not delegate the power, through the use of its trespass laws, wholly to exclude those members of the public wishing to exercise their First Amendment rights on the premises in a manner and for a purpose generally consonant with the use to which the property is actually put.
>
> • • • • •
>
> "The sole justification offered for the substantial interference with the effectiveness of petitioners' exercise of their First Amendment rights to promulgate their views through handbilling and picketing is respondents' claimed absolute right under State law to prohibit any use of their property by others without their consent. However unlike a situation involving a person's home, no meaningful claim to protection of a right or privacy can be advanced by respondents here. Nor on the facts of the case can any significant claim to protection of the normal business operation of the property be raised. Naked title is essentially all that is at issue." (*Id.* at 1609-1611.)

This principle has also been followed by the Court of Appeals for the Second Circuit in *Wolin* v. *Port of New York Authority*, 392 F. 2d 83 (2d Cir. 1968). The Court upheld the protestors' rights to distribute literature in the Port Authority Bus Terminal because the Terminal was dedicated to public use (*id.* at 88).

The rationale of the foregoing cases requires that the decision in the case at bar be affirmed. The site chosen for the demonstration was a residential neighborhood on the South side of Chicago. By no stretch of imagination could it be characterized as a place dedicated to the airing of public issues as in *Edwards* v. *South Carolina*, 372 U. S. 229 (1962). Neither is it an area which is frequented by the public generally because of the presence of large commercial areas as in *Marsh* v. *Alabama*, 362 U. S. 501 (1946) and *Amalgamated Food Employees Union* v. *Logan Valley*

Plaza; ..... U. S. ....., 88 S. Ct. 1601 (1968). Rather, it was an area of small homes, wholly inappropriate as the site of a large protest march. The peace and privacy of the residents were completely disrupted. Because the neighborhood people were not accustomed to such bizarre occurrences, the possibility of violence and mass riot became a virtual certainty. The area was neither appropriate nor customary as the site of a protest march.

The focal point of the demonstration was supposedly the home of the Mayor. However, no attempt was made to single out his house or confine the march to the area in front of it. There is no evidence in the record that the marchers even knew whether he was at home. The sole aim of the marchers was to make their presence in the neighborhood felt. The incident set out in our Statement of Facts. Wherein the marchers deviated from the path they had been following and began circling the area one block south illustrates their real purpose (R. 633). The marchers ceased marching around the block where the Mayor's home was located because they did not want it to look as if they were following the other group of marchers that had formed in front of them. It was irrelevant to them what block they were marching around as long as they made their presence in the area felt. It was irrelevant to them whether the Mayor knew why they were there, or even if they were there. It was the attention of the neighboring residents that they tried to attract. In this they succeeded. They also made a calculated effort to disturb and agitate the neighborhood residents. Again, they succeeded.

The march was to demand the discharge of Superintendent Benjamin Willis. If the Mayor was the appropriate person to lodge this complaint with, and if his home was the only place where a meeting with him could be held, and if they confined themselves to attracting his attention, a

march to his home might be seen as a reasonable course of action. In the absence of any alternative, perhaps the privacy of a government official's home may be sacrificed for a sufficiently serious grievance which requires immediate attention. But see Kamin, *Residential Picketing and the First Amendment,* 61 N. U. L. Rev. 177 (1966). However, none of these factors are present in the case at bar. Indeed, appropriate alternatives to a march on the Mayor's home existed, one being a demonstration at City Hall. City Hall is not new to protest marchers and demonstrations. Neither is the new Chicago Civic Center and its plaza, adjacent to City Hall. Groups frequently have demonstrated at the offices of the Chicago Board of Education in downtown Chicago. The petitioners might have brought their complaint to the school board officials at this building. This would have been particularly fitting since only the Chicago Board of Education, and not the Mayor, may hire and fire the Superintendent of Schools (the supposed object of Petitioners' protest). Ill. Rev. Stat. 1965, ch. 122, § 34-13. Moreover, this official is accountable only to the Board of Education, but not to the Mayor. There is no claim that these logical choices were foreclosed to them. There is no pretense that, in spite of his lack of legal authority to fire the Superintendent, the Mayor would not meet with petitioners and hear this complaint. In fact, the petitioners began their march from Buckingham Fountain in Grant Park and proceeded to City Hall (R. 604), then proceeded to the Mayor's home. There is no evidence in the record why this second part of the march was thought necessary or appropriate. It is difficult even to conjure up a possible justification. This second course of action can only be deemed a wholly unreasonable abuse of the freedom to speak and seek redress of grievances.

In their brief the petitioners have characterized the reaction of the neighborhood as a "heckler's veto." While it is probable that some of the neighbors read the marchers'

signs and disagreed with them (particularly, the characterization of their neighbor and Mayor as a "snake"), it is altogether more likely that the real outrage of the neighborhood people resulted from petitioners' calculated and hostile disruption of their privacy. It was as obvious to the neighborhood residents, as it must be to this Court, that the sole purpose of the march was to disrupt the everyday activities of the neighborhood people by marching eighty-five demonstrators through the area in military formation, alternatingly singing and chanting and then in dead silence.

This is not the exercise of civil liberties. This is harassment perpetrated with attempted impunity under the banner of free speech. The petitioners attempt to deceive this Court by relating that it was a hostile ideological response that they encountered. The remarks of the spectators in the record show that their reaction was only one of justifiable aggravation at the futile and unreasonable conduct of the marchers. Indeed, if any liberties were infringed upon, it was those of the residents. Streets were barricaded; taverns were closed; television camera lights flooded the intersection at 36th and Union; one hundred police officers swamped the area restricting the free movement of the local people. No doubt many of the residents did not understand what all this was for and feared violence to themselves, their families and their homes.

But in spite of the disturbance to the neighborhood residents, it was only when the huge crowd of spectators was on the verge of rioting that the police acted. Even then, they first requested the petitioners several times without success to cooperate in preventing a riot by leaving the area. It was only when the petitioners defiantly refused to leave, insisted through their leader Gregory that they would remain and invited arrest that the police reluctantly arrested them.

The petitioners base their case on the fact that sidewalks are public property, as if by adhering to a narrow line of march, they were infringing the liberty of the neighborhood people or invading their privacy anytheless. However, as this Court has held in *Cox* v. *Louisiana*, 379 U. S. 536 (1965) and *Adderley* v. *Florida*, 385 U. S. 39 (1966), the fact that property is publicly owned is not determinative. The test of First Amendment protection is whether the site chosen for a demonstration is appropriate given the use to which the place is ordinarily put. Only if no alternative site exists may this test of reasonableness be suspended or the privilege of free speech will be converted into a weapon of harassment and invasion of the privacy of others. In the present case appropriate and logical alternatives existed and were easily accessible. The conduct of the demonstrators, under the banner of free speech, was an unconstitutional harassment and infringement of the privacy of others.

State courts have consistently rejected demonstrators' claims that the Constitution protects residential picketing. In a series of cases, the Minnesota Supreme Court has held that an individual's right to peace and privacy in his home overrides any claim of constitutional immunity by residential picketers. In *State* v. *Zanker*, 179 Minn. 355, 229 N. W. 311 (1930), two striking employees picketed the home of a non-striking employee. The Court upheld their convictions for disorderly conduct:

> "They did not solicit an opportunity to talk to her and persuade her by peaceful means. Their conduct discloses a studied plan which carried with it an attitude of hostility. They disregarded her right to be undisturbed. They resorted to offensive means. Their conduct necessarily carried some degree of humiliation and insult; it naturally tended to provoke resentment not only on the part of Norma Christensen and her family but also among the neighbors. It was an annoy-

ance; it tended to disturb the immediate community . . ." (*Id.* at 356.)

See also *State* v. *Perry,* 196 Minn. 481, 265 N. W. 302 (1936); *State* v. *Cooper,* 205 Minn. 333, 285 N. W. 903 (1939). Though these cases involved labor disputes they cannot be distinguished on that ground. Constitutional protection does not depend upon the substance of the demonstrators' complaint. The type of cause they represent is irrelevant to the lawfulness of demonstrators' conduct.

At present ten States including Illinois have statutes prohibiting residential picketing (Colorado, Connecticut, Florida, Hawaii, Illinois, Kansas, Michigan, Nebraska, Utah and Wisconsin).

In his scholarly article, *Residential Picketing and the First Amendment,* 61 N. U. L. Rev. 177 (1966), Professor Kamin offers compelling reasons why residential picketing should be declared beyond the limits of constitutional protection:

> "But the case against residential picketing of public officers is so firmly based that reliance on Supreme Court dicta and legal analogies is unnecessary. The very concept of representative government renders odious and illegal such a stratagem of political agitation. All demonstrations at the homes of public officials will, of necessity, affect neighbors who are strangers to the political controversy. Does assumption of public office by a householder terminate the right of privacy for him, his family and neighbors? The question has a pervasive significance in a democratic society. If losing the last redoubt of privacy and repose, if subjecting one's family and neighbors to the constant harassment of sidewalk demonstrations is the price of holding public office, then the republic shall have lost the services of its ablest citizens."
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> • • • • •
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> "To subject a public official to the pressures of home picketing conflicts with basic democratic tenets. Our

political ideals contemplate that our elected officers should make rational decisions in large part on their reading of the public will. To permit the airing of grievances by citizens as a manifestation of part of the public will, protection is constitutionally afforded to the presentation of petitions to governments. Residential picketing is neither a primary nor a conventional way of communicating the existence of a grievance to a public officer. Rather, it is an instrument for achieving political results by oppressing and harassing the official and his family.

Petitions for redress of grievances are communications directed to the place of government in person, by mail, by telephone or even by demonstrations in view of public office buildings. Having utilized such methods, when a group resorts to residential picketing, it introduces a note of physical intimidation and coercion which is as foreign to our notions of proper public decision-making as bribery, blackmail or overt physical coercion. If public decisions are to be made in this way, the group which can bring the greatest amount of physical power to bear upon officials will see its views prevail. A government somewhere might function in this way—but it would not be a democracy." (*Id.* at 228-231.)

However, in the present case, the petitioners were not arrested because they were demonstrating in a residential area. They were arrested solely because it was the only course available to the police given a crowd of over one thousand persons on the verge of a riot and the petitioners' refusal to leave the area and the petitioners' intention, twice declared, to continue marching. Though there are compelling reasons for holding that the sole fact of a demonstration in a residential area is sufficient for a conviction for disorderly conduct, in the present case it is only one of several factors necessitating the arrest and conviction of the defendants. In its opinion the Illinois Supreme Court recognized the cogent reasons for holding that resi-

dential picketing *per se* constituted disorderly conduct but the Court did not affirm on that basis. The Court found that the police had protected the marchers from 4:00 P. M. until 9:30 P. M., making all possible efforts to allow the demonstration to continue; that after 9:00 P. M. the crowd had become unmanageable and given this clear and present danger of violence the police had no alternative but to arrest the demonstrators.

C. A Clear and Present Danger of Violence Requires That a Demonstration Cease.

In addition to a consideration of the appropriateness of the location chosen and infringement of the rights of others, constitutional protection automatically terminates when there is a clear and present threat of violence. In order to be useful to society this principle requires that police exercise limited discretion to determine when such a threat of violence exists. In *Feiner* v. *New York,* 340 U. S. 315 (1951), this Court held that policemen need not await the outbreak of violence to confirm their fears. Mr. Justice Frankfurter, in his concurring opinion in *Niemotko* v. *Maryland,* 340 U. S. 273 (1951), stated:

> "As was said in *Hague* v. *C. I. O.,* 304 U. S. 496 *supra,* uncontrolled official suppression of the speaker 'cannot be made a substitute for the duty to maintain order' 307 U. S. at 516. When conduct is within the allowable limits of free speech, the police are peace officers for the speaker as well as for his hearers. But the power effectively to preserve order cannot be displaced by giving a speaker complete immunity. . . . It is not a constitutional principle that, in acting to preserve order, the police must proceed against the crowd, whatever its size and temper, and not against the speaker." (*Id.* at 288.)

The petitioners' reliance on *Cox* v. *Louisiana,* 379 U. S. 536 (1965); *Edwards* v. *South Carolina,* 372 U. S. 229 (1963); *Garner* v. *Louisiana,* 368 U. S. 157 (1961); and *Henry* v. *City of Rock Hill,* 376 U. S. 776 (1963) is inappropriate. In all of these cases the decision turned on the fact that there was no evidence of any threat of violence. In *Cox* v. *Louisiana,* 379 U. S. 536, the Court said:

> "There is no indication that any member of the white group threatened violence. And this small crowd, estimated at between 100 and 300 was separated from the students by '75 to 80 armed policemen,' including 'every available shift of the City Police, the Sheriff's office in full complement, and additional help from the State Police,' along with a 'fire truck and the Fire Department.' As Inspector Trigg testified they could have handled the crowd." (*Id.* at 550.)

In *Edwards* v. *South Carolina,* 372 U. S. 229 (1963), this Court distinguished the *Feiner* case on the ground that there was no evidence of violence in the record:

> "There was no violence or threat of violence on their part, or on the part of any member of the crowd watching them. Police protection was 'ample.'
>
> "This, therefore, was a far cry from the situation in *Feiner* v. *New York,* 340 U. S. 315, where two policemen were faced with a crowd which was 'pushing, shoving and milling around' (*id.* at 317), where at least one member of the crowd 'threatened violence if the police did not act,' *id.,* at 317, where 'the crowd was pressing closer around petitioner and the officer,' *id.,* at 318 . . ." (*id.* at 236).

In *Henry* v. *City of Rock Hill,* 376 U. S. 776 (1963), this Court found that *Edwards* v. *South Carolina, supra,* required reversal because there was no evidence of violence:

> "They assembled in a peaceful, orderly fashion in front of the City Hall to protest segregation. They carried signs to that effect and they sang patriotic and

> religious songs. Although white onlookers assembled, no violence or threat of violence occurred and traffic was not disturbed. After 15 minutes of this, they were arrested for failure to disperse upon orders." (*Id.* at 777.)

Likewise *Garner* v. *Louisiana,* 368 U. S. 157 (1961) involved a peaceful sit-in at a lunch counter which was terminated by the police without any incident of violence to justify the arrest.

The record in the present case contains constant reiterations of the danger of the situation. First the sheer size of the crowd, which was estimated at 4000 by one officer (R. 491) and certainly exceeded 1000 (R. 115, 162-63, 277, 553), must be considered inherently dangerous. The record indicates that about 9:00 P. M. because of the rapid growth of the crowd the police were no longer able to maintain order (R. 300). A call was sent out for any additional officers that were available in an effort to keep control (R. 301).

The crowd was extremely agitated. They were hurling rocks at the marchers. The shouts from the crowd were worse than those which confronted the police in *Feiner* v. *New York,* 340 U. S. 315 (1951). There, a single person in the crowd told police that, if they didn't stop the speaker, he would. Here, not only was the crowd larger than that present in the *Feiner* case but many people were shouting "Let's get them" and attempting to break through the police lines (R. 277-78). The situation could have turned into a bloody riot in an instant. It is remarkable that the police attempted to maintain order as long (and as effectively) as they did. The situation was deemed to be uncontrollable at 9:00 P. M. The police then asked the demonstrators to cooperate in preventing a riot by marching out of the area, but they did not arrest them when they refused. The demonstrators were allowed to continue

marching. They were asked to leave again; again refused; again declared their intention to continue marching. Finally, at 9:30 P.M. the demonstrators were arrested. There was no longer an alternative. To allow the march to continue a moment longer would have been an invitation to a riot. In this connection the excerpt from an article reproduced on pp. 17-18 of the Appellant's Brief requires comment. The author contends that the potential danger of the situation stems not from the numbers present but from the interaction of audience and demonstrators.

"There is nothing *inherently* coercive about one dissenter, or one hundred, or one thousand, walking peaceably down a street or gathering to sing in front of a building." (Appellants' Brief at 17-18.) This is meaningless oratory. The potential danger of the situation stems from the numbers present, both demonstrators and spectators. Actual violence may erupt from the interaction of the two groups. It cannot be contended that there is no difference between protecting one demonstrator as opposed to one thousand demonstrators or controlling one spectator as opposed to a crowd of one thousand. The author also suggests that danger would be avoided if the audience would content itself to stay at home and ignore the demonstrators. It should be noted that in the instant cause the audience was a "captive" one in that it resided in the area of demonstration and could not effectively insulate itself from the noise and turmoil wrought by petitioners. But the function of free speech is to provoke constructive thought and action. It would not be a desire for peace but only apathy that would let the public ignore a demonstration in its midst. The petitioners have done violence to the author's thesis in excerpting this single ludicrous passage from the entire text.

D. Police Made Every Effort to Protect the Marchers and Control the Crowd. At the Point of Riot, When Some Marchers Refused to Leave and Declared Their Intention to Continue to March, There Was No Alternative But Arrest.

Up to the time of arrest, the police had done everything possible to assist the marchers. As is set out in the statement of facts, the police erected wooden barricades to contain the spectators (R. 539); they tried to keep the crowd atomized in small segments to prevent mass action (R. 269); they dispersed the spectators each time they tried to form their own line of march (R. 107, 134, 623, 632); they ordered the spectators back when they tried to cross the streets (R. 159); they ordered the spectators to stop shouting (R. 160). The record is replete with evidence that the police made every effort to protect the demonstrators and control the crowd (R. 102, 110, 111, 164, 298, 491). At their trial even the petitioners' attorney, who was present during the demonstration, admitted that the police protected the demonstrators (R. 128). After all these efforts failed the police were reluctant to arrest the demonstrators. They offered to escort any of the marchers out of the area who wished to leave. Three or four people accepted the offer and were allowed to leave without being arrested (R. 119).

The defendants make much of the fact that none of the people in the crowd who were throwing things were arrested. Commander Pierson did order the officers to arrest the rock throwers (R. 553). However, the objects were being thrown overhead from the back of the crowd making it impossible to tell who was throwing them (R. 298). In addition, the limited number of police compared with the size of the crowd made it impossible to devote officers to the task of seeking out those few individuals who were re-

sponsible for throwing things when the control of the crowd as a whole was an increasingly difficult task. Mr. Justice Frankfurter, in his concurring opinion in *Niemotko* v. *Maryland*, 340 U. S. 273 (1951), aptly noted:

> "It is not a constitutional principle that, in acting to preserve order, the police must proceed against the crowd, whatever its size and temper, and not against the speaker." (*Id.* at 289.)

In their brief, the petitioners attempt to unfairly discredit the conduct of the police and prejudice the issues before this Court. Apparently, since the record is replete with evidence proving that the police did everything possible to protect the demonstrators and control the crowd, petitioners have included in their brief a newspaper editorial complaining about the conduct of other police officers at an unrelated incident which occurred two and one-half years subsequent to the instant demonstration (Appellant's Brief at pp. 16-17).

By this tactic, petitioners seemingly hope to impeach the uncontroverted testimony of the trial witnesses and to persuade this Court to disregard the facts found by the jury based upon that testimony. The petitioners' modus appears to be that since the record in the case clearly supports the convictions, perhaps doubt can be raised by the incorporation of irrelevant material.

The uncontroverted record shows that the police did everything possible to protect the demonstrators and assist their march. They waited until the last possible moment to terminate the demonstration, when their repeated requests for dispersal had been refused and there was a great danger that violence would erupt at any moment. The guilty verdict returned by the jury is clearly supported by the evidence in the record and the convictions of the petitioners must be affirmed.

II.

CHICAGO'S DISORDERLY CONDUCT ORDINANCE AS INTERPRETED BY THE ILLINOIS SUPREME COURT IS CONSTITUTIONAL.

The interpretation which the highest State court places on a statute is as binding on this Court as if those very words were written into the State law. This principle was set out in *Winters* v. *New York*, 333 U. S. 507 (1947):

> "The interpretation by the Court of Appeals puts these words in the statute as definitely as if it had been so amended by the legislature. *Hubert* v. *Louisiana*, 272 U. S. 312; *Skiriotes* v. *Florida*, 313 U. S. 69, 79. We assume that the defendant, at the time he acted, was chargeable with knowledge of the scope of subsequent interpretation." (*Id.* at 514-515.)

The disorderly conduct ordinance of the City of Chicago has been before the Illinois Supreme Court in a series of cases. An examination of these cases reveals that a narrow interpretation has been placed upon that ordinance excluding from its scope activities protected by the First Amendment.

In the present case, the Illinois Supreme Court considered the defendants' claim that the ordinance was unconstitutional, holding (*Chicago* v. *Gregory*, 39 Ill. 2d 47, 233 N. E. 2d 422 (1968)):

> "Defendants also argue that the disorderly conduct ordinance of the city is unconstitutionally vague as applied to free expression and free assembly. We interpret the ordinance as authorizing the action taken by police under the circumstances disclosed by this record. (See *City of Chicago* v. *Williams*, 45 Ill. App. 2d 327.) It does not authorize the police to stop a peaceful demonstration merely because a hostile crowd may not agree with the views of the demonstrators. It is only where there is an imminent threat of violence, the police have made all reasonable efforts to protect the demonstrators, the police have requested that the demonstration be stopped and explained the request, if

there be time, and there is a refusal of the police request, that an arrest for an otherwise lawful demonstration may be made. As so interpreted we believe the ordinance is not so overly broad in scope as to be unconstitutionally vague or that it delegates undue discretion to the police. This is the type of conduct with which we are here faced and which is prohibited by the ordinance." (*Id.* at 60.)

As construed by the Illinois Supreme Court, no conviction under the ordinance is warranted unless all of the above-cited elements occur together. In addition, the Court was careful to interpret the ordinance so that it could not be used to enforce the "heckler's veto" as the petitioners contend.

In *Chicago* v. *Joyce,* 38 Ill. 2d 368, 232 N. E. 2d 289 (1967), the Illinois Supreme Court upheld a conviction of disorderly conduct over a challenge that the ordinance was unconstitutionally vague. The defendant and thirty-five other people sat on the sidewalk outside City Hall, completely blocking the entrance to the building and preventing the use of the sidewalk by passers-by. Three or four times the police requested them to leave. Instead of complying they began singing loudly and were arrested. The Court held that their conduct was not protected by the First Amendment and the constitutional challenge to the ordinance was without merit.

The petitioners rely heavily on *Landry* v. *Daley,* 280 F. Supp. 968 (N. D. Ill. 1968). That opinion is irrelevant to this Court's consideration of the challenge to the disorderly conduct ordinance. However, because the petitioners place great emphasis on it, a brief discussion and analysis of that opinion is warranted.

The District Court in *Landry* proceeded on the assumption that the constitutionality of a State law may be tested by scrutinizing the wording of the law and hypothesizing as to all possible abusive ways that the law could be ap-

plied. Though the Illinois Supreme Court had considered constitutional challenges to the ordinance, the District Court ignored the interpretation placed on the ordinance by the State's highest court. This was fundamental error. *Winters* v. *New York,* 333 U. S. 507 (1947). It is not the possible misapplication but the actual scope and application given by a law by the State court's interpretation that is the test of its constitutionality.

Because of the nature of the offense involved, disorderly conduct is difficult to define with precision. A great variety of conduct and many different factual situations fall within the scope of disorderly conduct. To enumerate them all would be impossible. However, this does not mean that the States should be deprived of a type of legislation that is most effective in implementing the police power. In *United States* v. *Petrillo,* 332 U. S. 1 (1947), this Court recognized the difficulties encountered by legislatures in attempting to define prohibited conduct with precision:

> " . . . That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense . . . The Constitution has erected procedural safeguards to protect against conviction for crime except for violation of laws which have clearly defined conduct thereafter to be punished; but the Constitution does not require impossible standards. The language here challenged conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. The Constitution requires no more." (*Id.* at 7-8.)

The type of conduct prohibited and the terms "disorderly conduct" and "breach of the peace" have a common meaning and are understood with greater precision than the most carefully drafted legislation could hope to accomplish. As this Court held in *Winters* v. *New York,*

333 U. S. 507 (1947), a defendant is as chargeable with knowledge of a court's subsequent interpretation, as he is with knowledge of the existence of the law interpreted. In *Chicago* v. *Hunt*, 374 Ill. 234, 29 N. E. 2d 86 (1940), the Illinois Supreme Court upheld the constitutionality of the City of Chicago's Disorderly Conduct Ordinance against a charge of vagueness:

> "We laid down the rule to which we now adhere that if the legislative body uses words having a common law meaning or a meaning made definite by statutory definition or previous judicial construction, it may strike directly at the evil intended to be curbed, leaving it to the pleader to state facts bringing the case within the statutory definition and to the judicial department of government to interpret the application of the act to the facts stated." (*Id.* at 236.)

In *Terminiello* v. *Chicago*, 337 U. S. 1 (1949), this Court reversed a conviction under the disorderly conduct ordinance because the trial judge had given it an unconstitutional interpretation in his charge to the jury. As the dissent in *Terminiello* points out the issue of the validity of the jury instruction had not been raised in any of the State Courts, it had not been included in the petition for certiorari, nor had it been briefed or argued before this Court. Thus, the Illinois Courts cannot be charged with condoning the unconstitutional interpretation given by the trial judge. The majority opinion in *Terminello* is void of any implication that the ordinance itself was invalid or was not susceptible of a constitutional interpretation by the Illinois courts when the issue of its validity was properly raised before them.

The petitioners claim that this ordinance is similar to those ruled invalid in *Cox* v. *Louisiana*, 379 U. S. 536 (1965); *Edwards* v. *South Carolina*, 372 U. S. 229 (1963) and *Wright* v. *Georgia*, 373 U. S. 284 (1963). In *Cox* v. *Louisiana, supra*, the Louisiana Supreme Court defined the

term "breach of the peace" as "to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet," 244 La. at 1105, 156 So. 2d at 455. The Court found that interpretation unconstitutional because it was likely to allow conviction for innocent speech. 379 U. S. at 552. In *Edwards* v. *South Carolina, supra,* this Court found that the State Court's definition of "breach of the peace" was vague. In part the South Carolina Supreme Court defined it thus:

> "By 'peace' as used in the law in this connection, is meant the tranquility enjoyed by citizens of a municipality or community where good order reigns among its members, which is the natural right of all persons in political society." *State* v. *Edwards,* 239 S. C. 339, at 343-344, 123 S. E. 2d 247 (1961), at 249.

In *Wright* v. *Georgia,* 373 U. S. 284 (1963), the defendants were convicted of disorderly conduct for playing ball in a public park at a time which police said was reserved for younger children. But it was undisputed that no such rules were posted in the park, nor were they a part of the disorderly conduct ordinance. The existence of such rules for the use of the park could not be proved. This Court said:

> "Under any view of the facts alleged to constitute the violation it cannot be maintained that petitioners had adequate notice that their conduct was prohibited by the breach of the peace statute. It is well established that a conviction under a criminal enactment which does not give adequate notice that the conduct charged is prohibited is violative of due process. *Lanzetta* v. *New Jersey,* 306 U. S. 451; *Connally* v. *General Construction Co.,* 269 U. S. 385; *United States* v. *Cohen Grocery Co.,* 255 U. S. 81; See also *United States* v. *National Dairy Products Corp.,* 372 U. S. 29." (*Id.* at 293).

None of these cases is remotely analogous to the present case. The Illinois Supreme Court has defined the City of Chicago's disorderly conduct ordinance to warrant a conviction for breach of the peace only when:

1. There is an imminent threat of violence;
2. the police have made all reasonable efforts to protect the demonstrators;
3. the police have requested that the demonstration be stopped;
4. the police have explained the request if there is time; and
5. the request has been refused.

All of these elements must be present to warrant an arrest. In addition, the Illinois Supreme Court has declared that the ordinance shall not be used to stop a peaceful demonstration merely because of the reaction of a hostile crowd. Though the precise conduct involved in a breach of the peace may be difficult to describe (and some courts have attempted and failed to do so) the Illinois Supreme Court has succeeded by carefully limiting police discretion and the circumstances in which the ordinance may be applied to conduct protected by the First Amendment. For this reason, the ordinance is constitutional.

III.

THERE WAS NO ERROR IN INSTRUCTING THE JURY AS TO THE EXISTENCE OF AN ORDINANCE WHEN THAT INSTRUCTION CLARIFIED TESTIMONY IN THE RECORD AND WAS NOT MISLEADING CONSIDERING THE CHARGE AS A WHOLE.

The petitioners' sole authority for their argument that one of the instructions given the jury constituted reversible error is a footnote from *Cox* v. *Louisiana,* 379 U. S. 536 (1965) at 556. There was no issue in that case relating to the validity of jury instructions. In the part of the opinion which the petitioners rely on this Court was

considering the constitutionality of a statute prohibiting the blocking of public passages. Though on its face it purported to forbid all obstruction of public ways, this Court found that in its application administrative discretion was used to allow some persons to demonstrate on public ways. In the footnote relied on this Court referred to an ordinance which it had discovered by its own research and had been cited by neither of the parties. It had not been mentioned in the State courts and was, of course, not given in the charge to the jury. This Court only referred to the ordinance to refute any possible argument that the ordinance contained standards for the granting of permits which guided officials in their activities and thus that the public passages ordinance was not applied with unfettered administrative discretion. When read in its context the footnote relied on is irrelevant to the petitioners' argument claiming prejudice from the jury instruction in this case.

The instruction on the existence of an ordinance requiring a permit for public assemblies was properly given because it clarified testimony in the record. One of the counts of disorderly conduct with which the petitioners were charged was "collecting in a body for an unlawful purpose." The prosecution introduced evidence that no permit for the demonstration was obtained or applied for as part of the proof of the petitioners' unlawful purpose. The defendants are correct in asserting that it was the purpose of the City to impress the jury that there was some wrongdoing (Appellants' Brief at 29). The failure to obtain or even apply for a permit knowing that one was required clearly tends to show unlawful intent. It was necessary to tender an instruction on the existence of the parade ordinance to clarify the relevance of the testimony for the jury. It was made clear in the other instructions that unlawful intent was an element of one of the charges of disorderly conduct and that the two charges of disorderly conduct were the offenses for which the petitioners were

tried. The existence of the parade ordinance was relevant to the proof of the prosecution's case giving the prosecutor a right to an instruction concerning it and thus, it was in no way erroneous to include that instruction in the charge to the jury.

The Illinois Supreme Court considered the issue of prejudiciality and found that the instruction was not misleading and that there was no prejudice to the petitioners. There is ample authority in Illinois law to support that Court's determination though its decision alone would be sufficient on a point of State procedure to warrant this Court's adhering to the Illinois decision. See *Kosowski* v. *McDonald Elevator Co.*, 33 Ill. App. 2d 386, 179 N. E. 2d 469 (1962); *Dickerson* v. *Baltimore & O. C. T. R.*, 73 Ill. App. 2d 5, 220 N. E. 2d 43 (1966).

Petitioners' sole authority does not support their argument. The instruction was proper. The Illinois Supreme Court was correct in concluding that giving the instruction to the jury did not prejudice petitioners.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the judgment of the court below should be affirmed.

Respectfully submitted,

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September 17, 1968.

Miss Nancy Packes, Ford Foundation grantee, assisted in research for this brief.

PREME COURT, U. S.

DEC 3 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 60

DICK GREGORY, et al.,

Defendants-Appellants,

vs.

CITY OF CHICAGO, a Municipal Corporation,

Plaintiff-Appellee.

REPLY BRIEF FOR APPELLANTS.

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INDEX

	PAGE
Response to City's Point I	1
Response to City's Point II	5
Response to City's Point III	6

IN THE

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No. 60

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vs.

CITY OF CHICAGO, a Municipal Corporation,

Plaintiff-Appellee.

REPLY BRIEF FOR APPELLANTS.

Defendants file this reply brief to clarify the issues and the record, in response to the answer of the City, and to emphasize why this case should be reversed.

I.

In this case the City agrees that the demonstrators were peaceful, never threatening, or seeking to provoke violence. And the City says (Br. 33) that no peaceful demonstrations will be terminated because of a hostile crowd. Why then does the City say that the demonstrators here were arrested and convicted?

A. The City argues that the choice of forum was "egregious", that the nature of the demonstration and the mere "presence" of the demonstrators was provoking, and that the spectators were a "captive" audience.

Under the City's theory the Mayor's neighbors own the public ways that pass through their neighborhood, and the neighborhood is "invaded" when those who do not live in the neighborhood use those public ways, particularly if they do so to communicate anything that is unpopular to the residents. However, this Court held in *Hague* v. *C.I.O.*, 307 U.S. 496, 515 (1939) that streets and parks "time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." The Court below rejected (App. 3a) the residential picketing argument, and the labor cases cited by the City do not apply to demonstrations on public issues.*

The City appears to be less than sincere when it argues (City's Br. 17) that the demonstrators had alternative choice of forums, including the Chicago Civic Center Plaza, see *People of the State of Illinois* v. *Riordan*, No. 41344, pending in the Illinois Supreme

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* Labor picketing is considered to involve private disputes between labor and management, and these cases do not apply to demonstrations on public issues in a public forum, *Duplex* v. *Deering*, 254 U.S. 443, 488, *Int'l. Brotherhood of Teamsters* v. *Vogt*, 354 U.S. 284, 393, concurring opinion of Frankfurter, J., *Niemotko* v. *Maryland*, 340 U.S. 268, 276, and Illinois follows this distinction, *Austin Congress Corp.* v. *Mannina*, 46 Ill. App. 2d 192, 202-203, 196 N.E. 2d 33. Note Kalven, *The Negro and The First Amendment*, 1965, p. 3, "I go along with Mr. Justice Frankfurter's judgment in *Niemotko* that the picketing cases, although 'logically relevant' are set apart by the different 'economic and social interests' they involve." See *Wilson* v. 1621, *Inc.*, 402 Pa. 94, 108, 1666 A. 2d 271, upholding the right to picket in residential neighborhood by citizens seeking revocation of a tavern license.

Court on an appeal *inter alia* from a conviction for criminal trespass for conducting a vigil in the Plaza, on the theory that the area is private property. But whether or not the Plaza was open to these demonstrators, it is their choice as to what public forum they wish to use, see the *Wolin* case, certiorari denied, 37 U.S. Law Week 3177, November 12, 1968, to the Port Authority that argued against the choice of its public facilities as a proper place for a peaceful demonstration.

The City attempts to make it appear that the spectators were a captive audience, as though that would justify the arrest of the defendants. But the record shows (City's Br. 2) that there were only twenty five spectators when the demonstrators arrived, that some 1200 to 1400 residents elected to leave their homes and come and join in the hostilities to the demonstrators. These were not captives, see *Saia* v. *New York*, 334 U.S. 558, 562.

As for the nature of the demonstration, it was made up of peaceful people who did not live in the neighborhood, some of whom were black. The City claims their mere presence was provoking. This confuses provocation, which is an invitation to disorder and may sustain a conviction for disorderly conduct, *Feiner*, with free speech, which by its nature may cause dissent and debate, *Terminiello*. When did anyone ever preach conversion to a group of believers? On the City's theory unpopularity justifies suppression (note Commander Pierson's statement to defendant Gregory, (R. 552, 568), that the continued presence of the demonstrators was provocation in and of itself, causing him to arrest them). However, under the first amendment, peaceful unpopularity must be tolerated, even by the residents in this case.

B. The City also argues that the grant of police protection was conditional, to be withdrawn when the message of the marchers became "of dubious societal value" as a result of the increasing threats and violence of the spectators and hecklers.

The City appears to suggest a sliding scale of free speech: if the crowd becomes hostile because of free speech activity, the police will know that the societal value of the demonstrators has diminished, and the police may withdraw protection and arrest the demonstrators and curb an otherwise lawful demonstration.

The City makes this argument in the face of a record that shows no attempt by the police to disperse the crowd, and the City does not dispute the record where it shows that the spectators who violated police orders and who broke police lines were merely thrown back by the police into the crowd.

On the City's theory the police were able to judge that the same message that had sufficient societal value to be protected by the police as free speech one minute, lost that value the next, coincident with the increased unprovoked threat and violence of the spectators. This argument is based on the unsupported assumption that *Cox* and *Edwards* would have been decided differently if the crowds there had acted illegally and violently, and as though *Brown* and *Wright* would have been decided differently if the public had stoned those who wanted to use the public library or the public park facilities.

The City balks at the term "heckler's veto", but the arguments it raises actually define the power in the heckler to cause the police to veto protected conduct,

by acting solely in response to one side of the controversy. In another context, this Court recently struck down such restraint *Carroll v. Pres. and Commrs. of Princes Anne,* (11/19/68) 37 Law Week 4041, even though (4041) the Court recognized that the speech involved was provoking, on the ground (4043) that self help by the police, just like *ex parte* court decisions, that restrain free speech are invalid.

II.

The City (p. 28) relies heavily on the *Winters* case, but fails to note that the ordinance in that case was struck down because unconstitutionally vague, and that *Winters* stands for the rule, for which it is cited in *Scull* v. *Virginia,* 359 U.S. 344, at 353 (1958), that

> "Certainty is all the more essential when vagueness might induce individuals to forego their rights of speech, press, and association for violating an unclear law. *Winters* v. *New York.*"

The City (p. 28) claims that the Illinois court has "in a series of cases placed a narrow construction on the Chicago ordinance," but in *Hunt, Terminiello**, and *Joyce*** no such construction was given, and the interpretation in this case permitted petitioners' conviction for their mere presence" ("Your presence could

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* City (p. 31) attempts to minimize *Terminiello* but that case was relied upon by this Court in invalidating disorderly conduct ordinances in *Edwards* and *Cox,* and the trial court's charge in *Terminiello* was no more broad than the language of the ordinance itself which was charged to the jury in the instant case.

** *Joyce* (p. 29) may be distinguished as "hardcore disorderly" where the conduct itself is inherent notice of the violation *Hunt,* and the accused may not raise the vagueness and overbreadth of the statute, *Woodward.*

cause a riot" R. 568, 552) even though "participants in an orderly demonstration in a public place are not chargeable with the danger, unprovoked except by the fact of the constitutionally protected demonstration itself, that their critics might react with disorder or violence" *Brown,* and, by City's own admission (p. 33) "the [Chicago] ordinance shall not be used to stop a peaceful demonstration merely because of the reaction of a hostile crowd."

The vagueness of the ordinance as written or interpreted vests too much discretion in the police and permitted defendants to be convicted for protected First Amendment conduct without fair notice required, *Winters,* and without standards necessary for due process of law, *Shuttlesworth* v. *Birmingham,* 382 U.S. 87, at 92 (1965).

III.

The City allowed the demonstrators to march without a parade permit from Buckingham Fountain to City Hall and then to the area of 35th and Lowe, and never charged the demonstrators with violation of the parade permit ordinance, Section 36-31. Now, the City seeks to show disorderly conduct by lack of a permit, but that is a separate offense, not relevant here. It is clear from the face of the parade permit ordinance that it lacks standards and is void for vagueness. Apparently this is why the City never chose to charge the defendants with marching without a permit.*

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* Section 36-31 of the Municipal Code of Chicago reads:

No parade shall be allowed on any public way, nor shall any open-air public meeting be held in or upon any ground abutting upon any public way, until a permit in writing therefor shall

CONCLUSION.

The City has failed to support the conviction. For the reasons set out above this Court should strike down the Chicago ordinance on disorderly conduct, and reverse.

Respectfully submitted,

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first be obtained from the department of streets and sanitation. Application to conduct such parade or procession or open-air meeting shall be made in writing to the commissioner of streets and sanitation at least thirty days prior to the event, by the persons in charge or control thereof, or responsible therefor, and such application shall set forth the desired route along which such parade or procession is to proceed, the desired time of starting, the duration, and the name of the person or society in control thereof, or responsible therefor, and the purpose of such parade or procession; and, in case of an open-air meeting, such application shall specify the place at which it is desired to hold such meeting, the purpose thereof, and the name of the person or society in control thereof, or responsible therefor, the time at which such meeting is to be held and the probable duration thereof. Upon such application being made, the superintendent of police, when necessary, shall investigate or cause to be investigated the person or society making such application and the truth of the statements made in such application regarding the purpose or object of such parade, procession or open-air meeting.

This ordinance is similar to the ordinance at issue in the *Shuttlesworth case*, No. 42, argued in this Court on November 18, 1968.

SUPREME COURT OF THE UNITED STATES

No. 60.—October Term, 1968.

Dick Gregory et al., Petitioners, v. City of Chicago.	On Writ of Certiorari to the Supreme Court of Illinois.

[March 10, 1969.]

Mr. Chief Justice Warren delivered the opinion of the Court.

This is a simple case. Petitioners, accompanied by Chicago police and an assistant city attorney, marched in a peaceful and orderly procession from city hall to the mayor's residence to press their claims for desegregation of the public schools. Having promised to cease singing at 8:30 p. m., the marchers did so. Although petitioners and the other demonstrators continued to march in a completely lawful fashion, the onlookers became unruly as the number of bystanders increased. Chicago police, to prevent what they regarded as an impending civil disorder, demanded that the demonstrators, upon pain of arrest, disperse. When this command was not obeyed, petitioners were arrested for disorderly conduct.

Petitioners' march, if peaceful and orderly, falls well within the sphere of conduct protected by the First Amendment. See *Shuttlesworth* v. *City of Birmingham*, — U. S. — (1969); *Brown* v. *Louisiana*, 383 U. S. 131, 141–142 (1966) (prevailing opinion of Mr. Justice Fortas); *Henry* v. *City of Rock Hill*, 376 U. S. 776 (1964); *Fields* v. *South Carolina*, 375 U. S. 44 (1963), reversing, 240 S. C. 366, 126 S. E. 2d 6 (1962). There is no evidence in this record that petitioners' conduct was disorderly. Therefore, under the principle first established in *Thompson* v. *City of Louisville*, 362 U. S.

199 (1960), convictions so totally devoid of evidentiary support violate due process.

The opinion of the Supreme Court of Illinois suggests that petitioners were convicted not for the manner in which they conducted their march but rather for their refusal to disperse when requested to do so by Chicago police. See 39 Ill. 2d 47, 60, 233 N. E. 2d 422, 429 (1968). However reasonable the police request may have been and however laudable the police motives, petitioners were charged and convicted for holding a demonstration not for a refusal to obey a police officer.* As we said in *Garner* v. *Louisiana*, 368 U. S. 157, 164 (1961): "[I]t is as much a denial of due process to send an accused to prison following conviction for a charge that was never made as it is to convict him upon a charge for which there is no evidence to support that conviction." See also *In re Oliver*, 333 U. S. 257, 273 (1948).

Finally, since the trial judge's charge permitted the jury to convict for acts clearly entitled to First Amendment protection, *Stromberg* v. *California*, 283 U. S. 359 (1931), independently requires reversal of these convictions.

The judgments are

Reversed.

MR. JUSTICE DOUGLAS, while joining the separate opinion of MR. JUSTICE BLACK, also joins this opinion.

MR. JUSTICE STEWART and MR. JUSTICE WHITE concur in the judgment of the Court and join its opinion insofar as it holds that under the principle established by *Stromberg* v. *California*, 283 U. S. 359, the petitioners' convictions cannot stand.

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*The trial judge charged solely in terms of the Chicago ordinance. Neither the ordinance nor the charge defined disorderly conduct as the refusal to obey a police order.

SUPREME COURT OF THE UNITED STATES

No. 60.—October Term, 1968.

Dick Gregory et al., Petitioners, v. City of Chicago.	On Writ of Certiorari to the Supreme Court of Illinois.

[March 10, 1969.]

Mr. Justice Black, with whom Mr. Justice Douglas joins, concurring.

This we think is a highly important case which requires more detailed consideration than the Court's opinion gives it. It in a way tests the ability of the United States to keep the promises its Constitution makes to the people of the Nation. Among those promises appearing in the Preamble to the Constitution are the statements that the people of the United States ordained this basic charter "in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity . . . and secure the Blessings of Liberty to ourselves and our Posterity . . . ." Shortly after the original Constitution was adopted, again undoubtedly in an attempt to "secure the Blessings of Liberty," the Bill of Rights was added to the Constitution, in which the First Amendment, later made applicable to the States by the Fourteenth Amendment, provides that: "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assembly, and to petition the Government for a redress of grievances."

In 1954 our Court held that laws segregating people on the basis of race or color in the public schools unconstitutionally denied Negroes equal protection of the laws.[1] Negroes, and many others who sympathized with them,

[1] *Brown* v. *Board of Education*, 347 U. S. 483 (1954).

cooperatively undertook to speed up desegregation. These groups adopted plans under which they marched on the streets carrying placards, chanting, and singing songs, all designed to publicize their grievances and to petition the various units of government, state and national, for a redress of these grievances. Their activities along these lines quite obviously aroused highly emotional feelings both on their part and on the part of others who opposed the changes in local laws and customs which the "picketers" and "demonstrators" advocated. Agitation between groups brought about sharp conflicts and clashes, threats, fights, riots, and near riots. This Court has, to be sure, had its difficulties and sharp differences of opinion in deciding the precise boundaries dividing the constitutionally permissible and impermissible in this field.[2] There have also been sharp disputes over whether the Court can hold laws unconstitutional because the Court deems them to be "unreasonable," "arbitrary," or contrary to fundamental standards of ethics, morals, or conscience.[3] Fortunately, however, these differences need not concern us here. For while we have pointed out in many cases that the States and their subordinate units do have constitutional power to regulate picketing, demonstrating, and parading by statutes and ordinances narrowly drawn so as not to abridge the rights of speech, press, assembly, or petition, neither Chicago, nor Illinois, at the time these petitioners were demonstrating had passed any such narrowly drawn laws.[4]

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[2] See, *e. g.*, *Cox* v. *Louisiana*, 379 U. S. 536 (1965); *Adderley* v. *Florida*, 385 U. S. 39 (1966).

[3] See, *e. g.*, *Chambers* v. *Florida*, 309 U. S. 227, 235–236, n. 8 (1940); *Rochin* v. *California*, 342 U. S. 165 (1952); *id.*, at 174 (concurring opinion); *Ferguson* v. *Skrupa*, 372 U. S. 726 (1963).

[4] The nearest thing to such a law in existence at that time was § 36–31 of the Municipal Code of Chicago, which required written permits for parades on "any public way" or for "any open air

The facts upon which these arrests and convictions for disorderly conduct occurred were these.

Petitioner Gregory and his group had become dissatisfied because Benjamin Willis, Superintendent of Chicago's public school system, was not moving speedily enough to desegregate the public schools. While Mayor Daley did not appear to have legal authority to remove Dr. Willis,[5] the group evidently believed the Mayor could cause him to be removed if he wanted to do so, and their prodding was therefore directed at the Mayor as well as against Willis. The group march began near the Chicago Loop District at 4:30 p. m. and ended five miles away in the neighborhood of Daley's home. A lieutenant of police, four police sergeants and about forty policeman met Gregory at the gathering place in Grant Park. There Gregory addressed the marchers saying:

> "First we will go over to the snake pit [city hall]. When we leave there, we will go out to the snake's house [the mayor's home]. Then, we will continue to go out to Mayor Daley's home until he fires Ben Willis [Superintendent of Schools]."

The demonstrators marched to the city hall, and then they marched to the Mayor's home about five miles away, arriving at about 8 p. m. The demonstrators were accompanied by the police and by the Assistant City

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public meeting . . . in or upon any public way." Petitioners were neither charged with nor convicted for the offense of failing to obtain a written permit. Indeed, the city clearly gave its effective permission to the marchers by sending a city attorney and a detail of specially trained officers to protect them along every foot of their march. Since "[d]eeply embedded traditional ways of carrying out state policy . . . are often tougher and truer law than the dead words of the written text," *Nashville, C. & St. L. R. Co.* v. *Browning*, 310 U. S. 362, 369 (1940), this march could not be considered illegal in and of itself.

[5] Respondent asserts that under Ill. Rev. Stat., c. 122, § 34–13 (1965), the Superintendent of Schools is accountable solely to the Board of Education and not to the Mayor.

Attorney from the park to the Mayor's home. When they reached this neighborhood, the demonstrators began marching around and around near the Mayor's home. Meanwhile the crowd of spectators from the neighborhood kept increasing, and its language and conduct became rougher and tougher. The events leading up to the arrest of the demonstrators are set out in detail in the opinion of the Illinois Supreme Court, and we agree fully with that court's description of these events, which we have reprinted as an appendix to this opinion. This episode finally came to a conclusion at about 9:30 p. m. Fearful that the threatening crowd of on-lookers could no longer be contained, the police asked Gregory and his marchers to leave the area. When they refused, they were arrested and charged with violation of Chicago's disorderly conduct ordinance, which provides as follows:

> "All persons who shall make, aid, countenance, or assist in making any improper noise, riot, disturbance, breach of the peace, or diversion tending to a breach of the peace, within the limits of the city; all persons who shall collect in bodies or crowds for unlawful purposes, or for any purpose, to the annoyance or disturbance of other persons; . . . shall de deemed guilty of disorderly conduct, and upon conviction thereof, shall be severally fined not less than one dollar nor more than two hundred dollars for each offense." Municipal Code of Chicago, § 193–1.

We agree with the Illinois Supreme Court that the "record shows a determined effort by the police to allow the marchers to peacefully demonstrate and at the same time maintain order." We also think the record shows that outside of the marching and propagandizing of their views and protests, Gregory and his group while marching did all in their power to maintain order. Indeed, in the

face of jeers, insults and assaults with rocks and eggs, Gregory and his group maintained a decorum that speaks well for their determination simply to tell their side of their grievances and complaints. Even the "snake" and "snake pit" invectives used by Gregory and his demonstrators, unlike some used by their hecklers, remained within the general give and take of heated political argument. Thus both police and demonstrators made their best efforts faithfully to discharge their responsibilities as officers and citizens, but they were nevertheless unable to restrain these hostile hecklers within decent and orderly bounds. These facts disclosed by the record point unerringly to one conclusion, namely, that when groups with diametrically opposed, deep-seated views are permitted to air their emotional grievances, side by side, on city streets, tranquility and order cannot be maintained even by the joint efforts of the finest and best officers and of those who desire to be the most law-abiding protestors of their grievances.

It is because of this truth, and a desire both to promote order and to safeguard First Amendment freedoms, that this Court has repeatedly warned States and governmental units that they cannot regulate conduct connected with these freedoms through use of sweeping, dragnet statutes that may, because of vagueness, jeopardize these freedoms. In those cases, however, we have been careful to point out that the Constitution does not bar enactment of laws regulating conduct, even though connected with speech, press, assembly, and petition, if such laws specifically bar only the conduct deemed obnoxious and are carefully and narrowly aimed at that forbidden conduct.[6] The dilemma revealed by this record is a crying example of a need for some such narrowly drawn law. It is not

[6] See, *e. g.*, *Thornhill* v. *Alabama*, 310 U. S. 88 (1940); *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940); *Giboney* v. *Empire Storage Co.*, 336 U. S. 490 (1949); *Scull* v. *Virginia*, 359 U. S. 344 (1959).

our duty and indeed not within our power to set out and define with precision just what statutes can be lawfully enacted to deal with situations like the one confronted here by police and protestors, both of whom appear to us to have been conscientiously trying to do their duties as they understood them. Plainly, however, no mandate in our Constitution leaves States and governmental units powerless to pass laws to protect the public from the kind of boisterous and threatening conduct that disturbs the tranquility of spots selected by the people either for homes, wherein they can escape the hurly-burly of the outside business and political world, or for public and other buildings that require peace and quiet to carry out their functions, such as courts, libraries, schools and hospitals.

The disorderly conduct ordinance under which these petitioners were charged and convicted is not, however, a narrowly drawn law, particularly designed to regulate certain kinds of conduct such as marching or picketing or demonstrating along the streets or highways. Nor does it regulate the times or places or manner of carrying on such activities. To the contrary, it might better be described as a meat ax ordinance, gathering in one comprehensive definition of an offense a number of words which have a multiplicity of meanings, some of which would cover activity specifically protected by the First Amendment. The average person charged with its violation is necessarily left uncertain as to what conduct and attitudes of mind would be enough to convict under it. Who, for example, could possibly foresee what kind of noise or protected speech would be held to be "improper"? That, of course, would depend on sensibilities, nerves, tensions, and on countless other things. As pointed out in *Cantwell* v. *Connecticut*, 310 U. S. 296, 308 (1940), common law breach of peace is at its best a confusing offense that may imperil First Amendment rights. But how infinitely more doubtful and uncertain

are the boundaries of an offense including any "diversion tending to a breach of the peace. . . ."? Moreover, the ordinance goes on to state that it shall be a crime for persons to "collect in bodies or crowds for unlawful purposes, or for any purpose, to the annoyance or disturbance of other persons . . . ." Such language could authorize conviction simply because the form of the protest displeased some of the on-lookers, and of course a conviction on that ground would encroach on First Amendment rights. See *Thornhill* v. *Alabama,* 310 U. S. 88 (1940); *Edwards* v. *South Carolina,* 372 U. S. 229 (1963); *Cox* v. *Louisiana,* 379 U. S. 536 (1965). And it must be remembered that only the tiniest bit of petitioners' conduct could possibly be thought illegal here—that is, what they did after the policeman's order to leave the area. The right "peaceably to assemble, and to petition the Government for a redress of Grievances" is specifically protected by the First Amendment. For the entire five-mile march, the walking by petitioners in a group, the language, and the chants and songs were all treated by the city's assistant attorney and its specially detailed policemen as lawful, not lawless, conduct.

The so-called "diversion tending to a breach of the peace" here was limited entirely and exclusively to the fact that when the policeman in charge of the special police detail concluded that the hecklers observing the march were dangerously close to rioting and that the demonstrators and others were likely to be engulfed in that riot, he ordered Gregory and his demonstrators to leave, and Gregory—standing on what he deemed to be his constitutional rights—refused to do so. The "diversion" complained of on the part of Gregory and the other marchers was not any noise they made or annoyance or disturbance of "other persons" they had inflicted. Their guilt of "disorderly conduct" therefore turns out to be their refusal to obey instanter a policeman's individual

command to leave the area of the Mayor's home. Since neither the city council nor the state legislature had enacted a narrowly drawn statute forbidding disruptive picketing or demonstrating in a residential neighborhood, the conduct involved here could become "disorderly" only if the policeman's command was a law which the petitioners were bound to obey at their peril. But under our democratic system of government, law making is not entrusted to the moment-to-moment judgment of the policeman on his beat. Laws, that is valid laws, are to be made by representatives chosen to make laws for the future, not by police officers whose duty is to enforce laws already enacted and to make arrests only for conduct already made criminal. One of our proudest boasts is that no man can be convicted of crime for conduct, innocent when engaged in, that is later made criminal. See, *e. g.*, *Chambers* v. *Florida*, 309 U. S. 227, 236 (1940). To let a policeman's command become equivalent to a criminal statute comes dangerously near making our government one of men rather than of law. See *Cox* v. *Louisiana*, 379 U. S. 559, 579 (1965) (concurring opinion). There are ample ways to protect the domestic tranquility without subjecting First Amendment freedoms to such a clumsy and unwieldy weapon.

The City of Chicago, recognizing the serious First Amendment problems raised by the disorderly conduct ordinance as it is written, argues that these convictions should nevertheless be affirmed in light of the narrowing construction placed on the ordinance by the Illinois Supreme Court in this case. That court held that the ordinance

> "does not authorize the police to stop a peaceful demonstration merely because a hostile crowd may not agree with the views of the demonstrators. It is only where there is an imminent threat of violence, the police have made all reasonable efforts to pro-

> tect the demonstrators, the police have requested that the demonstration be stopped and explained the request, if there be time, and there is a refusal of the police request, that an arrest for an otherwise lawful demonstration may be made."

This interpretation of the ordinance is, of course, binding on this Court, and the construction of the Illinois Supreme Court is as authoritative as if this limitation were written into the ordinance itself. But this cannot be the end of our problem. The infringement on First Amendment rights will not be cured if the narrowing construction is so unforeseeable that men of common intelligence could not have realized the law's limited scope at the only relevant time, when their acts were committed, cf. *Lanzetta* v. *New Jersey*, 306 U. S. 451, 456–457 (1939), or if the law remains excessively sweeping even as narrowed, *e. g.*, *Winters* v. *New York*, 333 U. S. 507 (1948). Petitioners particularly press the Court to dispose of the case on this latter ground. They raise troublesome questions concerning the extent to which, even under the narrowed construction, guilt still depends on the mere refusal to obey a policeman's order. And they suggest that the scope of the police obligation to attempt first to deal with the hostile audience is still not made sufficiently clear.

It is not necessary for the Court to resolve such issues in the present case, however, because the Chicago ordinance, as applied here, infringed on First Amendment rights for an even more fundamental reason. Whatever the validity of the Illinois Supreme Court's construction, this was simply not the theory on which these petitioners were convicted. In explaining the elements of the offense to the jury, the trial judge merely read the language of the ordinance. The jury was not asked to find whether, as the Illinois Supreme Court's construction apparently requires, there was "an imminent threat of

violence," or whether the police had "made all reasonable efforts to protect the demonstrators." Rather, it was sufficient for the jury to decide that petitioners had made "an improper noise" or a "diversion tending to a breach of the peace," or had "collect[ed] in bodies or crowds for unlawful purposes, or for any purpose, to the annoyance or disturbance of other persons."

In fact, far from taking account of the limiting factors stressed by the Illinois Supreme Court, the judge's charge was based on precisely the opposite theory. The jury was instructed, over petitioners' objection, that "the fact that persons other than these defendants may or may not have violated any laws or may or may not have been arrested should not be considered by you in determining the guilt or innocence of these defendants." The significance of this instruction in the context of the evidence at trial is of course apparent—the jury was simply told to ignore questions concerning the acts of violence committed by the crowd of on-lookers and attempts made by the police to arrest those directly responsible for them.[7] Under these circumstances, the principle established by *Stromberg* v. *California*, 283 U. S. 359 (1931), compels us to set aside these convictions. As we explained in *Williams* v. *North Carolina*, 317 U. S. 287, 292 (1942):

> "That is to say, the verdict of the jury for all we know may have been rendered on [an unconstitu-

[7] The trial judge explained the need for this instruction to counsel, in chambers, as follows:

"[T]he record is replete with evidence that a Jury may well consider to establish the violation of the law on the part of the so-called spectators and neighbors, and the record is silent as to whether any of them were arrested or not.

. . . . . .

"As far as why didn't they arrest these other people, why didn't they arrest the spectators and so on and so on, it seems to me that by virtue of the way the evidence went in, this will be a question that will bother these Jurors unless it is taken care of."

> tional] ground alone, since it did not specify the basis on which it rested. It therefore follows here as in *Stromberg* . . . that if one of the grounds for conviction is invalid under the Federal Constitution, the judgment cannot be sustained."

At the time the petitioner was tried, the Illinois Supreme Court had not yet announced its narrowing construction of the Chicago disorderly conduct ordinance. The trial judge's instructions supplied the jury only with the unadorned language of the statute. Thus it is entirely possible that the jury convicted the petitioner on the ground that he and the others who demonstrated with him had, in the language of the ordinance, "collect[ed] in bodies or crowds . . . to the annoyance or disturbance of other persons," simply because the form of their protest had displeased some of the onlookers. Since the petitioner could not constitutionally be convicted on this ground,[8] *Stromberg* compels the reversal of these convictions.[9]

In agreeing to the reversal of these convictions, however, we wish once more to say that we think our Federal Constitution does not render the States powerless to regulate the conduct of demonstrators and picketers, conduct which is more than "speech," more than "press," more than "assembly," and more than "petition" as those terms are used in the First Amendment. Narrowly drawn statutes regulating the conduct of demonstrators and picketers are not impossible to draft. And narrowly drawn statutes regulating these activities are not impossible to pass if the people who elect their legislators want them passed. Passage of such laws, however, like the

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[8] See *Thornhill* v. *Alabama*, 310 U. S. 88 (1940); *Edwards* v. *South Carolina*, 372 U. S. 229 (1963); *Cox* v. *Louisiana*, 379 U. S. 536 (1965).

[9] See also *Cole* v. *Arkansas*, 333 U. S. 196 (1948); *Cole* v. *Arkansas*, 338 U. S. 345 (1949).

passage of all other laws, constitutes in the final analysis a choice of policies by the elected representatives of the people.

We, of course, do not mean to say or even to intimate that freedom of speech, press, assembly, or petition can be abridged so long as the First Amendment remains unchanged in our Constitution. But to say that the First Amendment grants those broad rights free from any exercise of governmental power to regulate conduct, as distinguished from speech, press, assembly or petition, would subject all the people of the Nation to the uncontrollable whim and arrogance of speakers, and writers, and protesters, and grievance bearers. As Mr. Justice Goldberg wrote for the Court in *Cox* v. *Louisiana*, 379 U. S. 536, 554 (1965):

> "The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place at any time. The constitutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy."

Were the authority of government so trifling as to permit anyone with a complaint to have the vast power to do anything he pleased, wherever he pleased, and whenever he pleased, our customs and our habits of conduct, social, political, economic, ethical and religious, would all be wiped out, and become no more than relics of a gone but not forgotten past. Churches would be compelled to welcome into their buildings invaders who came but to scoff and jeer; streets and highways and public buildings would cease to be available for the purposes for which they were constructed and dedicated whenever demonstrators and picketers wanted to use them for their

own purposes. And perhaps worse than all other changes, homes, the sacred retreat to which families repair for their privacy and their daily way of living, would have to throw their doors open to all who desired to convert the occupants to new views, new morals, and a new way of life. Men and women who hold public office would be compelled, simply because they did hold public office, to lose the comforts and privacy of an unpicketed home. We believe that our Constitution, written for the ages, to endure except as changed in the manner it provides, did not create a government with such monumental weaknesses. Speech and press are, of course, to be free, so that public matters can be discussed with impunity. But picketing and demonstrating can be regulated like other conduct of men. We believe that the homes of men, sometimes the last citadel of the tired, the weary and the sick, can be protected by government from noisy, marching, tramping, threatening picketers and demonstrators bent on filling the minds of men, women, and children with fears of the unknown.

For these reasons we concur in the reversal.

APPENDIX.

Opinion of the Supreme Court of Illinois.

"About 4:30 P.M. the marchers, two abreast, walked out of the park and went to the city hall in the loop. The marchers then walked south on State Street to 35th Street and then proceeded west to Lowe Avenue, a distance of about 5 miles from the city hall. The mayor's home is at 3536 South Lowe Avenue. The demonstrators had increased in number to about 85 and they arrived at the mayor's home about 8:00 o'clock P.M. In addition to the police, the marchers were accompanied by their attorney and an assistant city counsel. At the suggestion of an assistant city counsel, Gregory had agreed that the group would quit singing at 8:30 P.M. Commander Pierson, district commander of the 9th police district which encompasses this area, met Lieutenant Hougeson at the corner of 35th and Lowe and assumed command of the police operations.

"There were about 35 people on the corner and a group of about 6 or 8 youngsters carrying a sign 'We Love Mayor Daley' tried to join the marchers but the police stopped them. As the demonstrators started south into the 3500 block of Lowe Avenue, Gregory testified he went back through the line to tell everyone just to keep singing and to keep marching. 'Don't stop and don't answer any one back. Don't worry about about anything that is going to be said to you. Just keep marching. If anyone hits you or anything, try to remember what he looks like, but above all means, do not hit them back. Keep the line straight and keep it tight.' The demonstrators chanted 'Ben Willis must go, Snake Daley also;' 'Ben Willis must go—When?—Now;' 'We are going to the home of the snake, the snake pit is down the street;' 'Hey, Hey, what do you know, Ben

Willis must go' and 'Hey, Hey, what do you know, Mayor Daley must go also.' They carried signs which read: 'Daley fire Willis;' 'Defacto, Desmacto, it is still segregation;' 'Ben Willis must go—now;' and 'Mayor Daley, fire Ben Willis.' They also sang the civil rights songs, 'We Shall Overcome' and 'We Shall Not Be Moved.'

"The police ordered the taverns closed during the march. Police from the task force, the 9th district and other districts surrounded the block in which the mayor's home is located. There were about 10 officers at each of the four intersections and about 10 officers spread along each of the four blocks. The rest of the 100 police officers assigned to the march accompanied the demonstrators as they marched around the block. The police tried to keep all spectators across the street from the marchers. They were equipped with walkie-talkie radios to relay reports of conditions to each other and they had a bullhorn with which they addressed the spectators and the demonstrators.

"As the marchers started around the block the first time, the neighbors began coming out of their homes. On the second time around the block some of the residents had moved their lawn sprinklers onto the sidewalk and the demonstrators went into the street just long enough to get around the water. On the third trip around the block the water sprinklers had been removed, presumably by order of the police. Gregory himself testified to several instances when the police kept the crowd that was accumulating from interfering with the march. 'One of the neighborhood people stood in front of the line, and we just stopped. This individual didn't move and we didn't move. After a few minutes, the officer standing on the corner asked him to move and he moved.' He said that on their fourth trip around the block (about 8:30 P.M.) people were yelling out the windows and the police made spectators in door ways close the doors.

About 8:30 P.M. the demonstrators quit their singing and chanting and marched quietly. Shortly before 9:00 P.M. 100 to 150 spectators formed a line of march ahead of the demonstrators. Gregory said 'the lieutenant [Hougheson] asked me if I would hold up the line until they got those people out of the way. I said, I will hold up the line, but they have just as much right to march peacefully as we have.' The spectators were ordered to move. In order to avoid the appearance that the marchers were following the 100 to 150 spectators who had been ordered to move, Gregory said his group marched straight south crossing 36th Street thus taking them one block south of the block which they had been marching. They had to stop when they crossed 36th Street while the police opened a pathway through about 300 spectators they had confined on the corner across the street.

"Sergeant Golden testified that between 8:00 o'clock and 9:00 o'clock the crowd increased steadily to a few hundred, but that from 9:00 o'clock until about 9:20 o'clock the people just seemed to come from everywhere until it reached between 1,000 and 1,200. During this time the crowd became unruly. There was shouting and threats. 'God damned nigger, get the hell out of here;' 'Get out of here niggers—go back where you belong or we will get you out of here' and 'Get the hell out of here or we will break your blankety-blank head open.' Cars were stopped in the streets with their horns blowing. There were Ku Klux Klan signs and there was singing of the Alabama Trooper song. Children in the crowd were playing various musical instruments such as a cymbal, trumpet and drum.

"Rocks and eggs were also being thrown at the marchers from the crowd. The police were dodging the rocks and eggs and attempted to catch the persons who threw them. Sergeant Golden explained the problem. 'You

could see these teen-agers behind the crowd. You could see a boil of activity and something would come over our heads and I or my partner would go down to try to apprehend who was doing it. You couldn't see who was doing it. They would vanish into the crowd.' He further testified that about 9:25 P.M., 'They were saying, "Let's get them," and with this they would step off the curb to try to cross 35th Street and we would push them back with force. Once in a while somebody would run out, and we would grab ahold of them and throw them back into the crowd.'

"About 9:30 P.M. Commander Pierson told Gregory the situation was dangerous and becoming riotous. He asked Gregory if he would co-operate and lead the marchers out of the area. The request to leave the area was made about five times. Pierson then told the marchers that any of them who wished to leave the area would be given a police escort. Three of the marchers accepted the proposal and were escorted out of the area. The remaining demonstrators were arrested and taken away in two police vans.

"While we have gone into considerable detail in describing the events leading to the arrest of defendants, only a complete reading of the record can give one a true picture of the dilemma confronting the police. During the entire march from 4:30 P.M. until 9:30 P.M. the marchers were accompanied by their attorney who advised them, and the police were accompanied by an assistant city attorney who advised them. In short the record shows a determined effort by the police to allow the marchers to peacefully demonstrate and at the same time maintain order."

SUPREME COURT OF THE UNITED STATES

No. 60.—October Term, 1968.

Dick Gregory et al., Petitioners, v. City of Chicago.	On Writ of Certiorari to the Supreme Court of Illinois.

[March 10, 1969.]

Mr. Justice Harlan, concurring in the result.

Two factors in this case run afoul of well-established constitutional principles, and clearly call for reversal. These are the ambulatory sweep of the Chicago disorderly conduct ordinance, see *e. g.*, *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940), and *Garner* v. *Louisiana*, 368 U. S. 157, 186 (1961) (concurring opinion of Harlan, J.), and the possibility that as the case went to the jury the convictions may have rested on a constitutionally impermissible ground. See *Stromberg* v. *California*, 283 U. S. 359 (1931).

I agree with the opinion of my Brother Black on both of these scores, and to that extent join in it.